



Division of Construction Storm Water Management Enforcement *Guidance Manual*

December 2003



State of California
Department of Transportation

CTSW-RT-03-110.31.30-1

Division of Construction Storm Water Management Enforcement Guidance Manual

State of California
Department of Transportation
CTSW-RT-03-110.31.30-1

December
2003

Division of Construction Storm Water Management Enforcement Guidance Manual

State of California
Department of Transportation
CTSW-RT-03-110.31.30-1

December
2003

Division of Construction Storm Water Management Enforcement Guidance Manual

State of California
Department of Transportation
CTSW-RT-03-110.31.30-1

December
2003

Division of Construction Storm Water Management Enforcement Guidance Manual

State of California
Department of Transportation
CTSW-RT-03-110.31.30-1

December
2003

Division of Construction Storm Water Management Enforcement Guidance Manual

State of California
Department of Transportation
CTSW-RT-03-110.31.30-1

December
2003

Division of Construction Storm Water Management Enforcement Guidance Manual

State of California
Department of Transportation
CTSW-RT-03-110.31.30-1

December
2003

Division of Construction Storm Water Management Enforcement Guidance Manual

State of California
Department of Transportation
CTSW-RT-03-110.31.30-1

December
2003

Contents

Section 1	Introduction and Background	1-1
1.1	Purpose and Scope.....	1-1
1.2	Applicable Permits and Laws	1-1
1.2.1	Clean Water Act & Porter-Cologne Water Quality Control Act.....	1-2
1.2.2	NPDES General Construction Permit & Department of Transportation Statewide Permit	1-2
1.2.3	Site-Specific Waste Discharge Requirements (WDRs)	1-3
1.2.4	Citizen Suits (CWA 33 United States Code Section 505 or 1365).....	1-3
Section 2	Contract Enforcement	2-1
2.1	Standard Specifications	2-1
2.2	Special Provisions	2-1
2.3	Project Plans.....	2-2
2.3.1	Temporary Water Pollution Control Items.....	2-2
2.3.2	Permanent Water Pollution Control Items	2-2
2.4	Enforcement Roles	2-3
2.4.1	The Resident Engineer	2-3
2.4.2	Assistant Resident Engineer / Inspector / Structures Representative.....	2-6
2.4.3	Construction Storm Water Coordinator.....	2-7
2.4.4	Department's Compliance Inspection Team	2-7
2.5	Contract Enforcement Procedures.....	2-7
2.5.1	Methods of Discovery of Noncompliance	2-8
2.5.2	Reporting Potential Non-Compliance	2-8
2.5.3	Contractual Enforcement	2-10
Section 3	Regulatory Agency Enforcement Actions	3-1
3.1	State Water Resources Control Board / Regional Water Quality Control Board.....	3-1
3.1.1	Informal Actions.....	3-1
3.1.2	Formal Enforcement Actions	3-1
3.2	United States Environmental Protection Agency (USEPA)	3-5
3.3	California Department of Fish and Game	3-5
3.4	Municipal Separate Storm Sewer System (MS4s).....	3-5
3.5	Emergency Response Conditions	3-5

Appendices

Appendix A Non-compliance Reporting Requirements from Statewide Storm Water Management Plan

Appendix B Sample Letters to Contractors

B-1 Notice of Nonconformance with Contract Water Pollution Control Special Provisions

B-2 Notice of Enforcement Action - Withhold Monthly Progress Estimate

B-3 Notice of Enforcement Action – Notice of Discharge of Worker

B-4 Notice of Enforcement Action – Suspension of Work

B-5 Notice of Enforcement Action – Retention of Funds for Proposed Fines

B-6 Notice of Enforcement Action – Termination of Control

Appendix C Sample Letters to RWQCB

C-1 Sample Notice of Potential Non-Compliance

C-2 Sample Response to Notice of Violation

C-3 Sample Response to Request for Technical Report

C-4 Sample Response to Administrative Complaint Liability

C-5 Sample Notice of Emergency Response

Section 1

Introduction and Background

1.1 Purpose and Scope

The California Department of Transportation (Department) has a comprehensive and coordinated statewide effort to prevent pollution in storm water runoff from its facilities. This effort includes an integrated approach that addresses the storm water quality activities of the various functional areas, including construction.

This manual is meant to educate construction staff on the applicable laws, regulations, and permits applicable to storm water pollution and to identify effective enforcement methods that are legally defensible and will promote a timely response by the contractor. It outlines the roles of each of the responsible parties in the enforcement of water pollution control on construction projects.

Additionally, this manual's intent is to implement a consistent enforcement program throughout the Districts. Non-uniform policy across the state can generate confusion, delays, and disputes over the enforcement and compensation for water pollution control work.

The manual is divided into three sections:

- **Section 1** provides the purpose and scope of this manual and is a discussion of the storm water permits and laws that pertain to construction activities. It is important to know where they came from, how they evolved, and who enforces them.
- **Section 2** is an explanation of the Department's legal authority to enforce construction storm water measures and the roles of individual staff members responsible for enforcement with the contractor.
- **Section 3** is a discussion of the various types of regulatory actions and responses to regulatory agency actions.

1.2 Applicable Permits and Laws

This section discusses the various Federal and State laws that govern the discharge of storm water, including:

- The Federal Clean Water Act
- Porter-Cologne Water Quality Control Act (Division 7 of the State Water Code)
- National Pollutant Discharge Elimination System (NPDES) General Construction Permit

- The Department's NPDES Permit
- Site specific Waste Discharge Requirements (WDRs)
- Citizen Suits (33 United States Code Section 1365)

1.2.1 Clean Water Act & Porter-Cologne Water Quality Control Act

Federal environmental regulations based on the Clean Water Act of 1972 (CWA) have evolved to require the control of pollutants from municipal separate storm sewer systems (MS4s), construction sites, and industrial activities. Discharges from such sources were brought under the (NPDES) Permit process by the 1987 CWA amendments and the subsequent 1990 promulgation of storm water regulations by the U.S. Environmental Protection Agency (EPA). The CWA allows states to operate the major programs under the Act and to enforce more stringent state standards. In California, the Porter-Cologne Water Quality Control Act of 1969 was largely equivalent to the CWA and, in some respects, more comprehensive. Thus, the EPA delegated administration of the federal NPDES program to the State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards (RWQCBs). California implemented this permit system through its existing permit program, whereby "waste discharge requirements (WDRs)" are issued to dischargers.

1.2.2 NPDES General Construction Permit & Department of Transportation Statewide Permit

The SWRCB has issued statewide general NPDES storm water permits for designated types of construction and industrial activities. In July 1999, the SWRCB issued the *Order No. 99-06-DWQ, NPDES No. CAS000003, National Pollutant Discharge Elimination System (NPDES) Permit, Statewide Storm Water Permit and Waste Discharge Requirements (WDRs) for the State of California, Department of Transportation (Department's Permit)*. The Department's Permit regulates storm water discharges from the Department's properties, facilities, and activities, and it requires that the Department's construction program comply with the requirements of the *State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No CAS000002, Waste Discharge Requirements (WDRs) for Storm Water Discharges Associated With Construction Activity (General Construction Permit)* issued by the SWRCB to regulate discharges from construction sites that disturb five acres or more of land. The General Permit requires that all covered projects prepare a Storm Water Pollution Prevention Plan (SWPPP).

1.2.2.1 Modifications to the NPDES General Construction Permit

In April 2001, the General Permit was modified to require construction site monitoring, sampling, and analysis. The modified provisions were issued as *Resolution No. 2001-046 Modification of the Water Quality order 99-08-DWQ State Water Resources Control Board (SWRCB) National Pollutant Discharge Elimination System*

(NPDES) General Permit For Storm Water Discharges Associated With Construction Activity (General Permit).

In December 2002, the SWRCB approved a modification of the General Permit to include and regulate discharges from construction sites that disturb land equal to or greater than one acre. The *Modification of Water Quality Order 99-08-DWQ State Water Resources Control Board (SWRCB) National Pollutant Discharge Elimination System (NPDES) General Permit For Storm Water Discharges Associated With Construction Activity (One to Five Acres)* was issued to comply with the NPDES Phase II regulations and became effective on March 10, 2003.

1.2.2.2 SWMP and Other requirements of the Permit

The Department's Permit required the Department to develop a Storm Water Management Plan (SWMP). The SWMP was developed to describe the minimum procedures and practices the Department uses to reduce the discharge of pollutants in discharges from storm drainage systems owned or operated by the Department. In addition, the SWMP addresses assignment of responsibilities within the Department of implementing storm water management procedures and practices as well as training, public education and participation, monitoring and research, program evaluation, and reporting activities. Included in the SWMP are the State Storm Water Quality Practice Guidelines (Guidelines) that detail the minimum Best Management Practices (BMPs) to be implemented by the Department to reduce pollutants in discharges from storm drain systems owned or operated by the Department. As requirements of the Department's Permit, these documents become part of the Department's Permit and the Department is committed to abiding by and enforcing them. Enforcement actions against the Department will reference the Department's Permit and these two documents.

1.2.3 Site-Specific Waste Discharge Requirements (WDRs)

Under the Porter-Cologne Water Quality Control Act, the RWQCBs have the authority to regulate the discharge by any person of waste that could affect the quality of the state's waters. The RWQCBs implement this law by the issuance of WDRs that prescribe requirements, in terms of effluent limitations or the quality of receiving waters, relative to various conditions of existing and threatened pollution and nuisance. Also, unlike the NPDES permits issued under the CWA, the WDRs can be used to regulate discharges to ground water and discharges of "wastes" as well as discharges of "pollutants."

1.2.4 Citizen Suits (CWA 33 United States Code Section 505 or 1365)

The CWA grants any citizen the right to "commence a civil action on his own behalf against any person who is alleged to be in violation of (A) an effluent standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which

is not discretionary with the Administrator.” The section also allows citizens to bring suit against the Administrator or regulatory agency where there is “alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.” Both the Department and the RWQCBs have been the subject of suits filed under this provision of the CWA.

It should be noted that there are some restrictions to this section. The plaintiff must give 60 days notice to the Administrator, to the State, and to the alleged violator prior to taking action. In addition, no action may be commenced if the Administrator or the State has commenced and is diligently prosecuting a civil or criminal action to require compliance with the standard, limitation, or order.

Section 2

Contract Enforcement

Compliance with storm water permits and laws on the Department's construction projects must be enforced according to contract provisions. The following section outlines the general and specific contract provisions that apply to storm water pollution prevention. The section goes on to identify the roles of various construction staff in the enforcement process.

2.1 Standard Specifications

The General Provisions - Legal Relations and Responsibility, Section 7-1.01G "Water Pollution Control" require the contractor to develop a water pollution control program, and that:

- The contractor shall not perform any clearing and grubbing or earthwork on the project, other than that specifically authorized in writing by the Engineer, until the program has been accepted
- The state will not be liable for any delays to the work due to the Contractor's failure to submit an acceptable water pollution control program
- Unless otherwise approved by the Engineer in writing, the contractor shall not expose a total area of erodible earth material that may cause water pollution, exceeding 70,000 square meters (17.3 acres) for each separate location, operation, or spread of equipment before either temporary or permanent erosion control measure are accomplished

2.2 Special Provisions

Section 10-1 of the Special Provisions contains specific language and direction regarding the implementation of water pollution control program for the project. They are legally binding to the contractor, and the Department becomes legally bound to enforce them. Specific requirements that can be found in the Special Provisions include:

- The requirement to abide by the Department's Permit
- The requirement to prepare a Storm Water Pollution Prevention Plan (SWPPP) or Water Pollution Control Program (WPCP)
- Requirements to prepare the SWPPP or WPCP in conformance with the latest version of the Department's *Storm Water Pollution Prevention Plan (SWPPP) and Water Pollution Control Program (WPCP) Preparation Manual* and the Department's *Construction Site Best Management Practices (BMPs) Manual*
- Provisions for retention of funds
- The requirement for the contractor to designate a water pollution control manager

- A listing of temporary water pollution control practice items of work
- Minimum BMP requirements
- Requirement to submit a water pollution control cost breakdown
- The specific rainy season dates
- Year-round, rainy season and non-rainy season implementation requirements
- The maximum allowable Disturbed Soil Area (DSA) for the project during the rainy season
- Requirements for regular maintenance of implemented BMPs
- Requirements for regular storm water inspections
- Discharge reporting requirements
- Sampling and analysis requirements
- BMP specifications
- Project scheduling

2.3 Project Plans

2.3.1 Temporary Water Pollution Control Items

The project plans may include quantities and location of specific temporary water pollution control practice items (i.e., BMPs) required on the project including:

- Soil stabilization measures (mulching, seeding, geotextiles, etc.)
- Outlet protection
- Check dams
- Linear sediment control (silt fences, gravel bags or fiber rolls)
- Stabilized construction entrance/exit
- Concrete washout

2.3.2 Permanent Water Pollution Control Items

The project plans may also indicate permanent water pollution control items that are to be constructed as specified in “Order of Work” of the Special Provisions and utilized during the construction period, including:

- Detention basins
- Vegetated swales
- Planting and irrigation on completed slopes
- Rock slope protection
- Outlet protection/velocity dissipation device
- Lined swales and v-ditches

2.4 Enforcement Roles

2.4.1 The Resident Engineer

The Resident Engineer (RE) has the primary responsibility of enforcing the storm water pollution prevention requirements of the contract. The responsibilities of the RE begin before the start of construction. Careful study and analysis of the project plans and specifications, visit(s) to the jobsite, and reviewing project requirements with the Project Manager and design team will make it much easier to enforce water pollution control during construction of the project. Additional responsibilities include:

Prior to start of construction:

- Designate appropriate staff as storm water inspectors to assist in preventing storm water pollution.
- Ensure that the proper forms (Notice of Construction) have been filed with the RWQCB. If not, RE must file or request the Project Engineer to submit the NOC.
- Schedule water pollution control as an agenda item at the pre-construction meeting. It is important to review general storm water issues as well as project-specific storm water issues. Examples of some of the items that should be covered in the pre-construction meeting are:
 - SWPPP/WPCP submittal and acceptance dates
 - Rainy season dates
 - Maximum disturbed soil area allowed during the rainy season
 - Housekeeping- Sediment tracking
 - Secondary containment of hazardous materials
 - Request that the contractor identify the person or persons who will be responsible for the implementation, inspection and completion of inspection forms, maintenance, and enforcement of the SWPPP requirements in the field

- State that it is the contractor's responsibility to confirm his subcontractors are also trained and will abide by the SWPPP requirements of the contract
- A 24-hour formal training is required for the contractor's Water Pollution Control Manager (WPCM)
- Review the enforcement procedures that will be used to if the project is deemed to be out of compliance with the Department's Permit, contract, or the project water pollution control program
- Approve SWPPP/WPCP. The SWPPP/WPCP must be thoroughly reviewed and corrections made prior to the start of soil disturbing activity.

Note that the RE may conditionally approve a SWPPP/WPCP and allow certain construction activities to begin while the SWPPP/WPCP is being revised. The conditional approval should be in writing and should clarify that only the conditionally approved activities will be allowed. The conditions should include a date that the revised SWPPP/WPCP should be completed. The RE making a conditional SWPPP/WPCP approval must consider the following:

- Type of activity – The RE may allow non-soil-disturbing activities or other activities that do not have the potential to cause pollution
- Location of activity – The RE should consider the proximity to any receiving water for any activity that he conditionally approves. Consider whether the activity is directly adjacent to a flowing river or whether it is in a self-contained area of the project.
- Approve the Water Pollution Control Cost Breakdown. The contractor is required by the Special Provisions to include a Water Pollution Control Cost Breakdown in the SWPPP that itemizes the contract lump sum for water pollution control work. The RE is not to make any partial payment for the item of water pollution control until the Water Pollution Control Cost Breakdown is approved. The contractor is then paid in accordance with the approved cost breakdown.

During construction:

- Ensure that the contractor deploys BMPs when and where they are required. The SWPPP states when and where the BMPs are required. The inspections conducted by the contractor and RE or his SWPPP Inspector should document when and where BMPs are not implemented as required.
- Conduct or direct the Department's SWPPP/WPCP site inspections. The RE is responsible for ensuring that the SWPPP Inspector(s) for the project is performing periodic SWPPP inspections on the site and filing the inspection reports in the project files.

- Ensure that contractor's SWPPP/WPCP inspections are conducted, documented, submitted, and filed. The contractor is required to inspect the project either once a week or once every two weeks per the project Special Provisions. A copy of each site inspection record is to be submitted to the RE within 24 hours of completing the inspection. The RE is required to keep a copy of inspection records in Category 20 of the project files.
- Verify that the contractor has sufficient materials on hand during the rainy season to implement the BMPs specified for the project when rain is forecast.
- Ensure that the contractor maintains BMPs as required. BMPs that are damaged by weather, construction activities, or vandalism must be routinely repaired or replaced. For example, sediment build up behind silt fences, fiber rolls, gravel bag check dams, and in sediment traps and desilting basins must be removed when they reach one-third of their capacity. Stabilized construction entrances must have accumulated sediment removed when they are no longer effective at removing sediment from vehicles.
- Ensure the contractor submits an annual certification of compliance as specified. Sign, date, and file this certification in the project records.
- Ensure that the contractor complies with the provisions that restrict the size of the contractor's rainy season active disturbed soil areas.
- Meet with personnel from regulatory agencies, such as the USEPA, the RWQCB, and the Department's Compliance Inspection Team to discuss storm water issues and measures.
- Identify changes to the plans or project schedule that require amendments to the SWPPP. Review and approve amendments, and ensure that they are properly inserted in the SWPPP. Amendments to the SWPPP/WPCP are required when there is a change in construction operations, contractor's work schedule, or field conditions which may affect the discharge of pollutants, when any condition of the Department's Permits are violated, annually prior to the start of the rainy season, or any other time that the RE deems necessary.
- Ensure that the contractor submits Notices of Discharge in a timely manner. Whenever a discharge of sediment or other pollutants occurs, the RE must receive a Notice of Discharge from the contractor (**Attachment K** of the SWPPP) within the time frame specified in the Special Provisions. The RE shall draft a Notice of Potential Non-Compliance for submittal to the District Construction Storm Water Coordinator (DCSWC) and the NPDES Coordinator for submittal to the RWQCB.
- Inform the contractor of SWPPP nonconformance, Notice(s) of Violation(s) (NOVs), Administrative Civil Liabilities (ACLs) and other regulatory enforcement actions and maintain written documentation of communications with contractor and regulatory agencies

- If nonconformance occurs, take appropriate contractual sanctions against the contractor based on the nature and severity of the situation. Sanctions are outlined in Section 2.5 “Contract Enforcement Procedures.”
- Ensure that the contractor is paid only for water pollution control work actually performed. If in a given month no work is completed under the water pollution control cost breakdown, the contractor is not to be paid any portion of the lump sum for that monthly estimate.

Before Contract Acceptance:

- As required by the contract, determine that all slopes are stabilized
- Require the contractor to remove temporary BMPs such as silt fences or other measures that are not a part of permanent erosion control or that the District maintenance unit has not requested them to be left in place
- Conduct a final walk-through of the project area with the Maintenance Superintendent of Region Manager
- Upon meeting final soil stabilization requirements, file Form CEM-2003 Notification of Completion of Construction, with the RWQCB (or confirm that the appropriate District staff, the Construction Storm Water Coordinator or the NPDES Coordinator completes this item)

2.4.2 Assistant Resident Engineer / Inspector / Structures Representative

These staff members are the Department’s first line of defense on the construction site. Completing SWPPP inspections and timely reporting to the RE of missing, improperly implemented, or inadequately maintained BMPs are the Assistant RE, Inspector, and Structure Representative responsibilities. It is critical that these staff members are well trained in proper BMP installation and are familiar with the SWPPP contract Special Provisions. They also may be assigned the responsibility to:

- Review and become familiar with the SWPPP/WPCP
- Conduct the site storm water inspections
- Prepare special daily reports on storm water pollution prevention. Record all storm water management activities, or inactivity and conversations with the contractor regarding storm water pollution prevention. Record site visits from regulatory agencies such as RWQCB or EPA, and any inspection the agencies perform
- Monitor the weather reports of the National Weather Service for rainfall predictions. If rainfall is predicted, direct the contractor to deploy appropriate BMPs as identified by the SWPPP/WPCP

- Inform the RE immediately of any problems with BMPs during the implementation of the SWPPP/WPCP and any observed discharges
- Identify changes in construction that may require amendments to the SWPPP /WPCP and notify the RE of these findings
- For sites covered by permits, confirm site access and the safety of representatives of regulatory agencies and local agencies when they are on site for any reason
- File field reports and documentation in Category 20 of project files.

2.4.3 Construction Storm Water Coordinator

- Review and recommend corrections to the SWPPP/WPCP prior to the RE providing written approval
- Present the Department's storm water contract enforcement procedures with the contractor during the pre-construction meeting
- Provide assistance inspections on a regular basis
- Assist RE with preparation of Notice of Potential Non-Compliance reports, and with written responses to regulatory agency actions. Forward copies of Notice of Potential Non-compliance to the NPDES Coordinator for submittal to the RWQCB.
- Ensure that field construction personnel are appropriately trained

2.4.4 Department's Compliance Inspection Team

- Perform compliance inspections and review project files, Category 20
- Provide timely inspection reports
- Recommend actions or methods that would bring nonconformance projects into conformance
- Report to District, Headquarters Division of Environmental Analysis, Headquarters Division of Construction and the SWRCB all compliance ratings

2.5 Contract Enforcement Procedures

If nonconformance occurs, the RE must take appropriate contractual sanctions against the contractor based on the nature and severity of the situation. The Standard Specification and the Contract Special Provisions provide several levels of sanction that may be enforced on a progressive basis to attain conformance. Serious discharges or an imminent threat of discharge on a project may require an immediate escalation to a higher level of enforcement.

2.5.1 Methods of Discovery of Nonconformance

Evidence of nonconformance may come from one of several sources:

- Site assessment (visual) - Some nonconformance issues are obvious and can be noticed without specifically inspecting for them. These nonconformance issues may be easily noticed as the RE or Inspector is driving through the job site on the way to the office or when inspecting other activities. Such nonconformance could include wind erosion, tracking onto local streets, poor housekeeping, location of concrete washouts, and BMP installations.
- Monitoring - Nonconformance may be discovered through regular inspections or routine monitoring. This could include the RE's daily reports, weekly or biweekly SWPPP inspections, or analytical testing that is being done either voluntarily or as a condition of the Department's Permits. The contractor may also be in nonconformance for failure to comply with administrative requirements such as conducting and submitting inspection reports, annual certifications, SWPPP/WPCP Amendments, etc.
- The RE's daily reports, weekly or biweekly SWPPP inspections, or analytical testing that is conducted either voluntarily or as a condition of the Department's Permit
- Contractor's failure to comply with administrative requirements, such as submitting inspection reports, annual certifications, SWPPP/WPCP Amendments.
- Department's Compliance Inspection reports
- Complaints from the public - Complaints may come directly to the RE or by means of the Public Information Office. If complaints from the public are not investigated and responded to immediately, they often result in complaints being filed with the RWQCB. The RWQCB is mandated to follow up on all public complaints, and will generally follow up with a site inspection and may initiate an enforcement action.
- Discharges (observed or reported) - Discharges of sediment or other pollutants from the project site due to the failure or lack of a BMP may be observed by the Department's staff or reported by a local municipality, regulatory agency, environmental group, or the general public. Discharges must be reported to the RWQCB verbally within 24 hours, and in writing within 14 days or 30 days depending on the type of nonconformance.

2.5.2 Reporting Potential Non-Compliance

The required text in the *SWPPP and WPCP Preparation Manual (Preparation Manual)* states that "if a discharge occurs or if the project receives a written notice or order from any regulatory agency, the contractor will immediately notify the Engineer and will file a written report to the RE within 7 days (3 days in District 11 due to Consent

Decree) of the discharge event, notice, or order. Corrective measures will be implemented immediately following the discharge, notice or order.” A sample discharge form is provided in **Attachment K** of the *Preparation Manual*. All discharges shall be documented on a Discharge Reporting Log using the example form in Appendix A, **Attachment U** of the *Preparation Manual*. Discharges requiring reporting include:

- Storm water from a DSA discharged to a waterway without treatment by a temporary construction BMP
- Non-storm water, except conditionally exempted discharges, discharged to a waterway or a storm drain system without treatment by an approved control measure (BMP)
- Storm water discharged to a waterway or a storm drain system where the control measures (BMPs) have been overwhelmed or not properly maintained or installed
- Storm water runoff containing hazardous substances from spills discharged to a waterway or storm drain system
- Where water quality sample results from a 303(d) stream listed for sediment/siltation or turbidity indicate elevated levels of sediment/siltation or turbidity in downstream samples
- Where water quality sample results indicate elevated levels of non-visible pollutants
- Other discharge reporting directed by the RE

Samples of letters sent to contractors relating to discharge reporting, for failure to implement BMPs, or any other nonconformance with contract water pollution control special provisions are included in **Appendix B**. At a minimum, the letter must include the following:

- Documentation of discharge or deficiency
- A request for corrective action by a certain date and no later than the next rain event

The Resident Engineer’s Responsibility:

When a discharge occurs on a project, the RE shall notify the DCSWC of the discharge and determine if the discharge requires reporting to the RWQCB. If the discharge is determined reportable, the DCSWC and the RE shall review the Department’s NPDES Permit and SWMP to determine the appropriate reporting timeframes. Specific reporting requirements are outlined in Section 9.4 of the SWMP that is included in **Appendix A**.

The DCSWC or RE shall notify the NPDES Coordinator of the discharge for the NPDES Coordinator to verbally report the discharge to the RWQCB. Per the Department's Permit, "The Department shall immediately notify the RWQCB by telephone, not later than 24 hours, whenever an adverse condition occurs as a result of a discharge... "

The RE shall then prepare a draft Notice of Potential Non-Compliance for submittal to the DCSWC, who forwards it to the NPDES Coordinator for submittal to the RWQCB. A Sample Notice of Potential Non-Compliance is included in **Appendix C-1**. The RE should use the contractor's Report of Discharge as a basis for preparing the Notice of Potential Non-compliance, as well as known facts about the discharge. The contractor's Report of Discharge may be included as an attachment to the Notice of Potential Non-compliance. If the contractor does not submit a Notice of Discharge in the time frame required by the contract Special Provisions, the RE should take immediate contractual enforcement action as outlined in the following sub-section.

2.5.3 Contractual Enforcement

The Department's Permit makes the Department responsible for storm water pollution control on the Department's Right-of-Way. Contract documents (i.e., Standard Specifications, Contract Special Provisions, Plans, etc.) make the contractor responsible for implementation of water pollution control practices on their project. The RE should use a progressive contract enforcement policy and be ready to escalate action immediately when a contractor fails to respond in a timely manner.

If the contractor or the Engineer identifies a deficiency in the implementation of the approved SWPPP or Amendments, and the deficiency is not corrected immediately or by a date requested by the contractor and approved by the RE in writing, the project is in nonconformance with the "Water Pollution Control" section of the contract Special Provisions. A verbal notification should be given and a letter should be sent to the contractor stating the nonconformance and outlining the possible penalties, or contract enforcement actions, that may be taken. For more serious nonconformance, immediate contract sanctions may be necessary. If nonconformance continues actions shall be escalated until conformance is achieved. Sample letters to the contractor for various levels of nonconformance are included in **Appendix B**. Recommended enforcement to maintain storm water conformance are detailed below:

2.5.3.1 Payment of Water Pollution Control Lump Sum

If the contractor is being paid a portion of the lump sum as a percentage of the total contract working days completed, that payment should be withheld in any month that the contractor fails to fully implement the required water pollution control practices. The contractor can then be paid for the withheld portion on the next monthly pay estimate if the contractor has properly complied with water pollution control requirements.

A more effective payment method for the water pollution control lump sum is to pay for water pollution control work as it is performed. When a cost breakdown for the

lump sum for Water Pollution Control has been submitted and approved, the contractor should be paid according to actual work completed under that cost break down. Payment for water pollution control according to the cost breakdown encourages timely installation of BMPs because it more fairly compensates the contractor in a month in which they implement a large number of BMPs, such as the month preceding the start of the rainy season when soil stabilization and sediment controls are installed. It allows for no payment under the water pollution control lump sum in a month that no water pollution control work is completed.

2.5.3.2 Retention of 25% of Monthly Progress Estimate Payment

The first level of penalty to the contractor for nonconformance with the Water Pollution Control Section is the retention of a portion of the monthly progress pay estimate.

Per Standard Special Provisions 10-1.02:

During the first estimate period that the contractor fails to conform to the provisions in this section, "Water Pollution Control," the Department may retain an amount equal to 25 percent of the estimated value of the contract work performed.

The retention of funds under this provision is for the contractor's failure to implement proper water pollution control on the project. This retention is in addition to other retention amounts required by the contract, and must be released for payment on the next monthly estimate for partial payment following the date when approved water pollution control measures have been implemented and maintained, and when water pollution has been adequately controlled, as determined by the RE. For additional details and procedures involving retentions, refer to Section 3-908 of the *Construction Manual*. See sample letter in **Appendix B-2**.

2.5.3.3 Discharge of Subcontractor or Worker

If a subcontractor or a worker on a project shows a disregard for storm water pollution prevention requirements or does not have sufficient training to perform the work in a manner consistent with the approved SWPPP/WPCP, the RE may direct that individual or subcontractor to be removed from the project.

Per Standard Provision 5-1.12:

If any subcontractor or person employed by the contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, they shall be discharged immediately on the request of the Engineer, and that person shall not again be employed on the work.

CB 03-06 further details the procedure for removal of worker from a project and allows for a request for reinstatement. See sample letter in **Appendix B-3**.

2.5.3.4 Temporary Suspension of Work

If immediate action is required due to the imminent threat of discharge or regulatory action, or if the contractor does not respond to written notification of deficiency in a timely manner, the RE shall suspend work on the project.

Per Standard Specification 8-1.05:

The Engineer shall have the authority to suspend the work wholly or in part, . . . for any time period as the Engineer deems necessary due to the failure on the part of the contractor to carry out orders given, or to perform any provision of the contract.

A letter ordering the suspension of work must include references to applicable sections of the specifications and, if possible, state the conditions under which work may be resumed. The RE may choose to suspend only the work that is contributing to or causing contract nonconformance. If the contractor continues to fail to take adequate action, the RE can subsequently suspend all work. When all work on the project is suspended, the only work that can be done on the project is Water Pollution Control work. Refer to Section 3-804 of the Construction Manual for procedures on Temporary Suspension of Work. See sample letter to Contractor in **Appendix B-4**.

2.5.3.5 Retention of Progress Payment for Fines and Penalties

When regulatory enforcement actions propose, assess or levy fines due to the contractor's violation of the Department's Permits, the SWPPP/WPCP, or Federal or State law, the RE may retain funds from the monthly progress payment up to the total amount of the fines. For retention under this provision, the RE must first give the contractor 30 days written notice prior to withholding the funds.

Per Standard Special Provisions 10-1.02:

Notwithstanding any other remedies authorized by law, the Department may retain money due the contractor under the contract, in an amount determined by the Department, up to and including the entire amount of Penalties proposed, assessed, or levied as a result of the contractor's violation of the Permits, the Manual, or Federal or State law, regulations or requirements.

In the case where a regulatory agency identifies a failure to comply with the Permits and permit modifications, the Manuals, or other Federal, State or local requirements, the Department must give the contractor 30 days notice of the Department's intention to retain funds. No additional funds are retained if the amount to be retained does not exceed the amount being withheld from partial payments per Section 9-1.06, "Partial Payments." Also, if it is later determined the state is not liable for the entire amount of the Cost and Liabilities assessed or proposed for which the retention was made, the Department will pay the contractor interest on the retained funds.

For additional details on Retentions, see the Construction Manual Section 3-909. See sample letter in **Appendix B-5**.

2.5.3.6 Administrative Deduction

Deductions (as opposed to retentions) are those amounts held back for specific purposes. The RE must identify, initiate, and control all deductions. As soon as a final determination is made as to the amount of a fine or penalty to the State due to the contractor's violation of the Department's Permits, the SWPPP/WPCP, or Federal or State law, regulations or requirements, that amount shall be deducted from the payment due to the contractor. For additional details see Section 3-908 of the *Construction Manual*.

2.5.3.7 Termination of Control

If, after the withholding of progress payments and suspension of work, a contractor does not respond to the direction of the RE to comply with water pollution control requirements, the RE may mobilize another contractor or Department's maintenance personnel to complete the work.

Per the Standard Specifications section 8-1.08:

Failure to supply an adequate working force, or material of proper quality, or failure to comply with Section 10262 of the State Contract Act, or in any other respect to prosecute the work with the diligence and force specified by the contract, is grounds for termination of the contractor's control over the work and for taking over the work by the State as provided in the State Contract Act.

Termination of control requires concurrence of the project construction engineer and the construction field coordinator. The district construction deputy director must send a request to the Division of Construction Chief to start the termination process.

For more details regarding termination of control, see Section 3-807 of the *Construction Manual*. See sample letter in **Appendix B-6**.

2.5.3.8 Termination of Contract

The Standard Specifications specify the contractual requirements for termination when the District Director determines, (and the Deputy Director of Project Delivery approves) that it is in the Department's best interest not to continue with a project.

Per Standard Specifications 8-1.11:

The contract may be terminated by the Director when termination is authorized by Section 7-1.125, "Legal Actions Against the Department," Section 7-1.165, "Damage by Storm, Flood, Tsunami or Earthquake," or by other provisions of the contract which authorize termination.

To initiate contract termination, the District Director must write a letter to the Division of Construction Chief stating the reasons for requesting the termination. The letter should include the following information:

- Reasons for the termination
- Work performed
- Work yet to be performed
- Any information pertaining to the advertisement date of the new contract

If the Division Construction Chief concurs and the Deputy Director of Project Delivery approves, the Division of Construction Chief will issue a letter to the contractor notify the contractor that the Department will terminate the contract. See Section 3-810 of the *Construction Manual* for a more complete description of this process.

Section 3

Regulatory Agency Enforcement Actions

3.1 State Water Resources Control Board / Regional Water Quality Control Board

The primary agency for water pollution regulation in California is the State Water Resources Control Board (SWRCB) and the nine Regional Water Quality Control Boards (RWQCBs). The RWQCBs conduct the implementation and enforcement of those regulations. The RWQCBs use a progressive enforcement policy consisting of an escalating series of actions. For some violations, an informal response such as a phone call or a staff enforcement letter may be used. For more serious or continuing violations, they may issue a monetary fine or a Cease and Desist Order (CDO) until compliance is achieved. A full copy of the SWRCB / RWQCB Enforcement Guidelines is available at <http://www.swrcb.ca.gov/plnspols/wqep.doc> Discussions of the enforcement actions that may apply to the Department's construction activities are detailed in the following sections.

3.1.1 Informal Actions

3.1.1.1 Verbal Enforcement Actions and Enforcement Letters

RWQCB staff may contact the RE either by phone or in person to inform them of a specific violation. The verbal contact may be followed with an enforcement letter signed by a senior staff member.

3.1.1.2 Notices of Violation (NOV)

A NOV is the highest level of informal enforcement action. It is signed by the Executive Officer of the RWQCB and includes a summary of potential enforcement options available for the specific non-compliance identified. A NOV may include a request for a written response. Whether or not the NOV requests a written response, a NOV should always be responded to in writing. Failure to respond adequately to a NOV will result in an escalation to a formal enforcement action. Examples of appropriate responses are included in **Appendix C-2**.

3.1.2 Formal Enforcement Actions

3.1.2.1 Notice to Comply

This enforcement action is issued by the RWQCB to issue citations for minor violations of the California Water Code. The violations listed below are considered minor violations for this purpose:

- Inadvertent omissions or deficiencies in record keeping that do not prevent an overall compliance determination
- Records (including WDRs) not physically available at the time of the inspection provided the records do exist and can be produced in a timely manner

- Inadvertent violations of insignificant administrative provisions that do not involve a discharge of waste or a threat thereof
- Failure to have permits available during an inspection
- Violations that result in an insignificant discharge of waste or a threat thereof, provided however, there is no significant threat to human health, safety, welfare or the environment

Violations not considered minor in nature include:

- Any knowing, willful, or intentional violation of Division 7 (commencing with Section 13000) of the California Water Code
- Any violation that enables the violator to benefit economically from non-compliance either by realizing reduced costs or by gaining a competitive advantage
- Chronic violation or violations committed by a recalcitrant violator
- Violations that cannot be corrected within 30 days

3.1.2.2 Notice of Storm Water Non-Compliance

A Notice of Storm Water Non-Compliance may be issued when a project fails to file a NOC to obtain coverage or fails to file a construction Annual Certification. It is important that the RE verifies that the project manager has filed a NOC and that a copy is included in the project SWPPP (**Attachment F of the SWPPP**). If after two notices a discharger fails to file for coverage, mandatory civil liabilities (fines) will be assessed.

3.1.2.3 Technical Reports and Violations

If a project is discharging, has had a discharge, or is suspected of having discharged, the California Water Code allows the RWQCB to conduct investigations and to require technical or monitoring reports from the discharger. This will require supplying specific documentation of material reports and water quality tests, and may be required on a regular basis for the duration of the project or beyond. Failure to comply is a priority violation and may result in Administrative Civil Liability. See sample letter in **Appendix C-3**.

3.1.2.4 Cleanup and Abatement Order (CAO)

This enforcement is issued to a discharger who “has discharged or discharges waste in violation of a waste discharge requirement, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged in to waters of the state and creates, or threatens to create, a condition of pollution or nuisance.” The CAO requires cleanup or remedial action to be taken by the discharger. It may also require technical and monitoring reports. The CAO may also require that the discharger reimburse

RWQCB staff oversight costs. Violations of CAOs likely will trigger further enforcement actions such as ACL, Time Schedule Orders (TSO) or referral to the State Attorney General.

3.1.2.5 Time Schedule Order (TSO)

A Section 13300 TSO requires a discharger to submit a time schedule for the actions that the discharger will take to address actual or threatened discharges. A Section 13308 TSO will prescribe a civil penalty if compliance is not achieved in accordance with the time schedule.

3.1.2.6 Cease and Desist Order (CDO)

Cease and Desist enforcement actions are often issued to dischargers with chronic non-compliance problems that do not have short-term solutions. A CDO will usually contain a compliance schedule, including interim deadlines (if appropriate), interim effluent limits (if appropriate), and a final compliance date. Violations of CDO should trigger further enforcement in the form an ACL, or referral to the State Attorney General.

3.1.2.7 Modification or Rescission of Waste Discharge Requirements

In the relatively rare case of a project being subject to Waste Discharge Requirements (WDRs), the WDR can be modified or rescinded in response to violations. This could seriously impact the progress of the project or even effectively shut the project down. Depending on the circumstances, this action may be enforced for failure to pay fees, penalties, or liabilities for discharges that adversely affect beneficial uses of the waters of the state, or for violation of the SWRCB WDRs.

3.1.2.8 Administrative Civil Liability (ACL)

ACLs are monetary assessments imposed by the RWQCB or the SWRCB. The California Water Code authorizes the Executive Officers of the RWQCBs and in certain instances, the SWRCB Executive Director to issue an ACL complaint. An ACL complaint describes the violation and provision of law authorizing imposition of the civil liability, proposes a specific civil liability, and informs the recipient that a public hearing will be held within 60 days after the complaint is served. It is the policy of the SWRCB that a public comment period should be provided prior to the settlement of any ACL. After review of the comments, the executive officer may withdraw or redraft and re-issue the complaint.

Upon receipt of an ACL complaint the discharger(s) may waive its right to a public hearing and pay the liability, negotiate a settlement, or appear at the SWRCB or RWQCB hearing to dispute the complaint. Following a hearing, the RWQCB or SWRCB will consider whether to affirm, modify, or reject the liability. If it is decided to adopt the ACL Order, it may be for an amount that is greater or less than the amount proposed in the complaint but may not exceed the maximum statutory liability. If the Executive Officer decides to dismiss the liability prior to the hearing, the Executive Officer must withdraw the complaint.

The RWQCB or SWRCB may allow the portions of the liability to be satisfied through the successful completion of a Supplemental Environmental Project (SEP) and /or a Compliance Project (CP). The remaining portion of the liability is paid to the State Cleanup and Abatement Account or other fund or account as authorized by statute.

Determining the Amount of an ACL

The California Water Code lists a number of factors that must be taken into consideration when setting ACLs. California Water Code Section 13385(e) governing ACL amounts for violation subject to the CWA, states:

The regional board, the state board, or the superior court, as the case may be shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violation, the degree of culpability, economic benefit or savings ,if any, resulting from the violation, and other matters as justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

Examples of some of the violations and the associated penalties:

- Up to \$1,000 per day for discharging without a permit (\$5,000 per day for non-NPDES discharges if hazardous waste is involved and violation is due to negligence)
- Up to \$1,000 per day for failing or refusing to furnish technical or monitoring reports or falsifying information therein (\$5,000 per day for non-NPDES discharges if hazardous waste is involved and there is a knowing violation)
- Up to \$20,000 per day for failing to notify the Office of Emergency Services (OES) of a discharge of hazardous substances that exceeds the reportable quantity or more than 1000 gallons of sewage
- Not less than \$500 or more than \$5,000 per day for each day of failure to notify OES of a discharge of any oil or product in or on the waters of the state
- Up to \$10,000 per day for violations of time schedules
- Up to \$10 per gallon of waste discharged, or up to \$5,000 per day of violation

Petitions

Persons affected by most formal enforcements by a RWQCB may file petitions with the SWRCB for review. The petition must be received by the SWRCB within 30 days of the RWQCB action. See sample letter in **Appendix C-4**.

3.1.2.9 Referrals for Criminal Action

Enforcement actions taken by the RWQCB are administrative or civil actions. In some cases where there is reason to believe that specific individuals or entities have engaged in criminal conduct, The RWQCB or SWRCB can refer the case to the USEPA Criminal Division, the State Attorney General, or the appropriate county District Attorney or City Attorney to seek criminal prosecution. Under criminal law, individual persons, as well as responsible parties in public agencies and business entities, may be subject to fines or imprisonment. Note that the maximum per-day or per-gallon civil monetary remedies are two to ten times higher when imposed by the courts instead of the RWQCB.

3.2 United States Environmental Protection Agency (USEPA)

USEPA has delegated administration of the federal National Pollutant Discharge Elimination System (NPDES) Program in California to the SWRCB and the nine RWQCBs. The USEPA reserves the authority to apply fines in addition to fines issued by the RWQCBs under the State Water Code. Federal environmental regulations based on the Clean Water Act allow the EPA to levy fines on dischargers of up to \$27,500 per day per violation.

3.3 California Department of Fish and Game

Section 1601 of the Fish and Game Code requires that public agencies such as the Department reach an agreement with the California Department of Fish and Game if the proposed work affects a waterway. Violations may include causing dirt and sediment to enter the waters of the state; using creosoted timbers in the waters of the state, and placing petroleum products, (such as asphalt or diesel), into, or where they can get into, the waters of the state. Violations of the agreement are punishable by fines, imprisonment, or both. A schedule of Fish and Game Bail and Penalties is available at <http://www.dfg.ca.gov/enforcement/2000bail.pdf>.

3.4 Municipal Separate Storm Sewer System (MS4s)

When sediment or pollutants from the Department's Right-of-Way discharge to a local storm water system, those discharges are subject to enforcement by the local jurisdiction. Enforcement procedures may vary, but may include citations for code enforcement violation that range from as little as \$50 to the maximum amount allowed under the State Water Code. Some municipalities will issue citations directly to the contractor or the individual person responsible for the discharge.

3.5 Emergency Response Conditions

When conditions arise that require the Department to conduct emergency activities to protect public health, safety and property, these conditions may result in the Department or contractor not implementing some of the water pollution control elements required by the Department's Permit, General Construction Permit, SWMP, or the project's SWPPP/WPCP. Such incidents are not considered noncompliance

pursuant to Section B(8) of the Department's Permit, General Construction Permit – Fact Sheet page 2, Section 1.3.4 in the SWMP and in accordance with the Federal Code of Regulations 40 CFR Section 122.41(n)(1) through (4) which addresses upsets, such as emergency response for public safety. Upset means an exceptional incident in which there is an unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. See sample letter in **Appendix C-5**.

Website addresses of Referenced Documents

Federal Clean Water Act (CWA)

<http://www4.law.cornell.edu/uscode/33/ch26.html>

Porter-Cologne Act

http://www.swrcb.ca.gov/water_laws/docs/portercologne2003.pdf

SWRCB / RWQCB – Water Quality Enforcement Policy

<http://www.swrcb.ca.gov/plnspols/wqep.doc>

California Department of Transportation Permit (Department's Permit)

<http://www.swrcb.ca.gov/stormwtr/docs/factsheet.doc>

General Construction Permit (General Permit)

<http://www.swrcb.ca.gov/stormwtr/docs/finalconstpermit120602.doc>

California Department of Fish & Game Bail and Penalty Schedule

<http://www.dfg.ca.gov/enforcement/2000bail.pdf>

Caltrans Storm Water Management Plan (SWMP)

<http://www.dot.ca.gov/hq/env/stormwater/special/index.htm>

Caltrans Storm Water Quality Practice Guidelines (Practice Guidelines)

<http://www.dot.ca.gov/hq/env/stormwater/special/index.htm>

Caltrans SWPPP/WPCP Preparation Manual (Preparation Manual)

<http://www.dot.ca.gov/hq/construc/stormwater/manuals.htm>

Caltrans Construction Site BMP Manual (BMP Manual)

<http://www.dot.ca.gov/hq/construc/stormwater/manuals.htm>

Appendix A

9.4 NONCOMPLIANCE REPORTING

Provision K.3.a of the Permit requires the Department to develop and implement a Report of Noncompliance. The following reporting protocol was developed in a cooperative effort between the Department and the SWRCB and RWQCBs staff. Unless otherwise indicated in the Regional Work Plans, the District NPDES Storm Water Coordinator will make noncompliance reports to the RWQCB Executive Officer or designee.

9.4.1 Noncompliance Reporting Plan for Municipal and Construction¹ Activities

9.4.1.1 Immediate Reporting

Conditions:

- Discharges of permitted storm and non-storm water that violate or threaten to violate² prohibitions, limitations and conditions of the Permit and which may endanger health or the environment;
- Discharges of prohibited non-storm water discharges that may endanger health or the environment;
- Discharges of spills of petroleum products, hazardous materials or wastes, and toxic chemicals; and
- Failure or serious damage³ to BMP control facilities that result in discharges that may endanger health or the environment.

Department Action:

¹ Discharges from construction sites regulated by the State General Permit for Storm Water Discharges Associated with Construction Activities.

² Examples of violations or excessive erosion to stream banks or beds, discharges that result in excessive sedimentation to the stream or water body, discharges of hazardous materials or waste or toxic materials, discharges with strong and/or lingering odors, discharges that cause high turbidity, discharges that show evidence of pollutant plume, and discharges that result in mortality of fish or aquatic species.

³ Failure or damage to a BMP that results in a system bypass or short circuiting that results in a discharge meeting the characteristics described in Footnote 2.

- Immediately notify RWQCB no later than 24 hours after discovery of the incident;
- Follow-up in writing within 24 hours;
- Perform follow-up monitoring of major spills and/or perform conformation sampling to ensure that threats to waters have been eliminated as determined by the RWQCB; and
- Retain records for three years.

9.4.1.2 Reporting in 5 Working Days⁴

Conditions:

- Discharges of non-storm water that are not authorized nor exempt by the Permit or any other NPDES permit and do not result in serious violations⁵ of the State Water Code;
- Discharges that result in violations of narrative and numeric prohibitions and limitations of the permit;
- Discharge that violate requirements of the CWA, 404 permits and 401 certifications;
- Discharges that result in violations of narrative and numeric standards and requirements specified in Regional Board Basin Plans and Statewide Water Quality Plans;
- Discharges from BMP control facilities that have failed or are seriously damaged and the discharges do not result in serious violations⁵ to Permit requirements; or
- Failure to submit documents or materials in accordance with the Permit or SWMP.

Department Action:

- Notify RWQCB within 5 working days;
- Follow-up within 30 days with written report describing the noncompliance problem; corrective measures implemented, a time schedule; and
- Retain records for three years.

9.4.2 Reporting Plan for Construction Activities Only**9.4.2.1 48-Hour Notification**

Condition:

⁴ Required by Provision K.3 of Caltrans Statewide NPDES Storm Water Permit, Order no. 99-06-DWQ.

⁵ See definition of serious violation in Footnote 2.

- Runoff from site if determined to be causing or contributing to exceedances of water quality standards.

Department Action:

- Notify RWQCB as soon as possible but within 48 hours;
- Submit written follow-up report within 14 calendar days; and
- Keep records for three years.

9.4.2.2 30-Day Notification

Condition:

- Site is not able to certify in accordance with the annual certification requirements in the General Permit; or
- All other incidents of noncompliance not reported under the 48-hour requirement or reported under Section 9.4.1.1 or 9.4.1.2.

Department Action:

- Submit reports to RWQCB within 30 days of inability to certify or within 30 days of other instances of noncompliance; and
- Keep all records for 3 years.

Appendix B

DEPARTMENT OF TRANSPORTATION

OROVILLE CONSTRUCTION FIELD OFFICE
2060 THIRD STREET
OROVILLE, CA xxxxx
PHONE (000) xxx-xxxx
MOBILE (000) xxx-xxxx
FAX (000) xxx-xxxx



*Flex your power!
Be energy efficient!*

December 3, 2003

03-123456
03-GLE-32KPR7.7/R9.6
Fed No
Replace Sandy Creek Bridge
CT 5.4A.182

M & M Construction
1234 56th Street
North Highlands, CA 95660

Attn: Mr. Tom Smith, Water Pollution Control Manager (WPCM)
Mr. Richard Jones, Project Manager

Subject: Notice of Nonconformance with Contract Water Pollution Special Provisions

Gentlemen:

[Description of Nonconformance, reference contract Special Provisions, or other relevant documents]

This project has been found in nonconformance with contract Special Provision Section 10-1.02, -Water Pollution Control, for deficiencies in the implementation of Best Management Practices (BMPs).

Specifically, the following deficient items require immediate attention:

- Install Stabilized Construction Entrance / Exit (TC-1) at all ingress/egress locations along Community Road as indicated on drawing WPCD-4 of the contract plans.
- Install Concrete Washouts (WM-8) as required by the contract Special Provisions.
- Clean up spills of concrete and washout residue near south entrance to the construction yard and properly dispose of according to contract requirements.

[Date to comply and pending sanctions]

All work shall be completed by close of business on December 5, 2003. Failure to complete these items before the stated date may result in the enforcement of contract sanctions including retention of 25% of the next monthly progress pay estimate.

Mr. Tom Smith
Mr. Richard Jones
December 3, 2003
Page 2

If you have any questions or concerns regarding this matter, please contact me at (123) 456-7890.

Sincerely,

ORIGINAL SIGNED BY

Resident Engineer

c: Structure Representative
 SWPPP Inspector
 Area Construction engineer
 District Construction Storm Water Coordinator

File 5.4, 20
NRCO

DEPARTMENT OF TRANSPORTATION

DISTRICT 3
OROVILLE CONSTRUCTION
2060 THIRD STREET
OROVILLE, CA 95965
PHONE (530)
MOBILE (530)
FAX (530)



*Flex your power!
Be energy efficient!*

December 8, 2003

03-123456
03-GLE-32KPR7.7/R9.6
Fed No
Replace Sandy Creek Bridge
CT 5.4A.182

M & M Construction
1234 56th Street
North Highlands, CA 95660

Attn: Mr. Tom Smith, Water Pollution Control Manager (WPCM)
Mr. Richard Jones, Project Manager

Subject: Notice of Retention of 25% of Monthly Pay Estimate for Nonconformance with
SWPPP Requirements

Gentlemen:

[Description of Nonconformance, reference Contract Special Provisions, or other relevant documents]

As was stated in my earlier letter dated December 3, 2003, this project has been found in nonconformance with requirements of Section 10-1.02-Water Pollution Control of the contract Special Provisions. The contractor was directed in that letter to correct items of nonconformance by December 5, 2003.

During the required bi-weekly SWPPP inspection by the State's SWPPP inspector the afternoon of December 5, 2003, it was noted that required stabilized construction entrances had been constructed, however spills of concrete waste remained in several locations and no concrete washouts had been installed. In addition, spills of hazardous materials (concrete curing compound) were found on the project site, and containers of curing compound were stored in the construction yard without required secondary containment. Details and specific locations of these additional nonconformance items are documented on the December 5, 2003 SWPPP Inspection report attached. Since the contractor has failed to correct all of the items of nonconformance by the specified date, the Department will retain 25% of the next monthly estimate payment.

[Date to comply and pending sanctions]

All listed noncompliance items referenced above must be brought into compliance by the close of business on December 12, 2003. Failure to complete these items before the stated date may

Sample letter B-2

Mr. Tom Smith
Mr. Richard Jones
December 8, 2003
Page 2

result in the enforcement of further contract sanctions including suspension of work on the project.

If you have any questions or concerns regarding this matter, please contact me at (510) 123-4567.

Sincerely,

ORIGINAL SIGNED BY

Resident Engineer

Attachment

c: Structure Representative
 SWPPP Inspector
 Area Construction engineer
 District Construction Storm Water Coordinator

File 5.4, 20
NRCO

DEPARTMENT OF TRANSPORTATION

OROVILLE CONSTRUCTION FIELD OFFICE
2060 THIRD STREET
OROVILLE, CA xxxxx
PHONE (000) xxx-xxxx
MOBILE (000) xxx-xxxx
FAX (000) xxx-xxxx



*Flex your power!
Be energy efficient!*

December 11, 2003

03-123456
03-GLE-32KPR7.7/R9.6
Fed No
Replace Sandy Creek Bridge

CT 5.4A.182

M & M Construction
1234 56th Street
North Highlands, CA 95660

Attn: Mr. Tom Smith, Water Pollution Control Manager (WPCM)
Mr. Richard Jones, Project Manager

Subject: Discharge of Subcontractor – ABC Concrete Finishing

Gentlemen:

[Description of Nonconformance or discharge, reference to contract Special Provisions, or other relevant documents]

In your report of discharge for discharge of concrete slurry yesterday at the eastern abutment of the new Sandy Creek Bridge, you identify your subcontractor, ABC Concrete Finishing, as responsible for unloading a tanker full of concrete slurry into an unauthorized dumping location. The slurry was dumped near the edge of the stream bank where it overflowed the bank and discharged into the creek bed. As discussed in yesterday's letter, this discharge is in nonconformance with Section 7-1.01G - Water Pollution, of the Standard Specifications.

In a conversation on the jobsite today with your superintendent, Bob Johnson, he stated to me he told ABC on several occasions to install and use lined concrete washouts per the contract plans and Special Provisions. Despite these reminders, ABC was responsible for unauthorized dumping of waste concrete at no less than two new locations north of the construction yard today. Unauthorized concrete washout is in nonconformance with Section 10-1.02 – Water Pollution Control, of the contract Special Provisions. In addition, you stated to me in a telephone conversation yesterday morning that ABC Concrete Finishing was responsible for the spills of concrete waste and concrete curing compound that were documented in my letter of Water Pollution Control nonconformance on December 3, 2003.

[State authority to dismiss subcontractor]

Mr. Tom Smith
Mr. Richard Jones
December 11, 2003
Page 2

ABC Concrete Finishing and its employees have shown either a complete lack of understanding or a blatant disregard for contract requirements in regards to water pollution control, and shall not be allowed to continue these practices. In accordance with Section 5-1.12 of the Standard Specifications – “Character of Workers”, ABC Concrete Finishing is hereby and on this date discharged from working on this project. Upon completion of all cleanup activities as directed in my previous Temporary Suspension of Work letter (December 10, 2003), subcontractor shall remove all equipment and personnel from the project site immediately.

[Reinstatement procedure per Construction Bulletin 03-06]

Should you or the subcontractor request reinstatement of the subcontractor, I will arrange a meeting with the project Construction Engineer to consider your request. At this meeting you will be informed of the reasons for the removal directive, and you will be afforded the opportunity to respond.

If you have any questions or concerns regarding this matter, please contact me at (123) 456-7890.

Sincerely,

ORIGINAL SIGNED BY

Resident Engineer

c: Structure Representative
 SWPPP Inspector
 Area Construction Engineer
 Construction Storm Water Coordinator

File 5.4, 20
NRCO

DEPARTMENT OF TRANSPORTATION

OROVILLE CONSTRUCTION FIELD OFFICE
2060 THIRD STREET
OROVILLE, CA xxxxx
PHONE (000) xxx-xxxx
MOBILE (000) xxx-xxxx
FAX (000) xxx-xxxx



*Flex your power!
Be energy efficient!*

December 10, 2003

03-123456
03-GLE-32KPR7.7/R9.6
Fed No
Replace Sandy Creek Bridge

CT 5.4A.182

M & M Construction
1234 56th Street
North Highlands, CA 95660

Attn: Mr. Tom Smith, Water Pollution Control Manager (WPCM)
Mr. Richard Jones, Project Manager

Subject: Suspension of Work for Nonconformance with Standard Specifications, Contract
Special Provisions and Discharge of Concrete Waste to Sandy Creek

Gentlemen:

[Description of Nonconformance or discharge, reference to contract Special Provisions, or other relevant documents]

A substantial discharge of Concrete grinding slurry to Sandy Creek was observed today at the eastern abutment of the new Sandy Creek Bridge. Discharge of waste materials derived from roadway work in a live stream channel where it could be washed away by high stream flows is a noncompliance with Section 7-1.01G - Water Pollution, of the Standard Specifications. Discharge of waste material to the waters of the State may also be a violation of the NPDES permit for General Construction Activities.

The Contractor is directed to immediately suspend all construction activities on the project and remove all concrete residues from the stream bank and dry streambed and properly dispose of this waste off of the State right of way. Contractor shall abide by all terms of all other project environmental permits while carrying out this cleanup operation. All items of Water Pollution Control nonconformance noted in previous letters to the contractor (December 1, 2003 and December 8, 2003) must also be completed to the satisfaction of the Engineer prior to the Contractor being allowed to resume work. A 25% retention will be deducted from the monies due the Contractor in the next monthly progress pay estimate.

Additionally, the Contractor is directed to prepared and submit a Notice of Discharge

Sample letter B-4

Mr. Tom Smith
Mr. Richard Jones
December 10, 2003
Page 2

(Attachment K) of the approved Storm Water Pollution Prevention Plan (SWPPP) describing today's discharge, and submit it to the Engineer within 5 days as required in the Special Provisions section 10- 1.01 (Water Pollution Control – Reporting Requirements).

[Date to comply and pending sanctions]

Failure to complete the clean up of the discharge within 48 hours of the receipt of this letter may result in further contract sanctions including Termination of Control of the contract in accordance with Section 8-1.08 of the Standard Specifications. Per the contract Special Provisions the Contractor shall be responsible for any penalties assessed or levied on the Contractor or the Department as a result of the Contractor's failure to comply with the provisions of the Permits, the SWPPP, and Federal, State and local regulations and requirements.

If you have any questions or concerns regarding this matter, please contact me at (123) 456-7890.

Sincerely,

ORIGINAL SIGNED BY

Resident Engineer

c: Structure Representative
 SWPPP Inspector
 Area Construction Engineer
 Construction Storm Water Coordinator

File 5.4, 20
NRCO

DEPARTMENT OF TRANSPORTATION

OROVILLE CONSTRUCTION FIELD OFFICE
2060 THIRD STREET
OROVILLE, CA xxxxx
PHONE (000) xxx-xxxx
MOBILE (000) xxx-xxxx
FAX (000) xxx-xxxx



*Flex your power!
Be energy efficient!*

December 21, 2003

03-123456
03-GLE-32KPR7.7/R9.6
Fed No
Replace Sandy Creek Bridge

CT 5.4A.182

M & M Construction
1234 56th Street
North Highlands, CA 95660

Attn: Mr. Tom Smith, Water Pollution Control Manager (WPCM)
Mr. Richard Jones, Project Manager

Subject: Retention of Funds for Proposed Fines Associated with Recent RWQCB
Enforcement Action

Gentlemen:

[Reference the Complaint and the contract Special Provisions authorizing the retention]

On December 20, 2003, the California Department of Transportation (Department), District 00 (District) received an Administrative Civil Liability Complaint (ACL) (Complaint No. 2003-0000) for the Replace Sandy Creek Bridge construction site located in Santa Tierra County. The ACL proposed a suggested civil liability of \$9,400 (\$940.00 per day x 10 days of violation) and a maximum civil liability of \$ 100,000.00 (10,000.00 per day x 10 days of violation). The ACL was issued by the West Coast Regional Water Quality Control Board (RWQCB), Region 10. As stated in Section 10- 1.01 (Water Pollution Control) of the contract Special Provisions, the Contractor shall be responsible for penalties assessed or levied on the Contractor or the Department as a result of the Contractor's failure to comply with provisions in this section "Water Pollution Control" including, but not limited to, compliance with the applicable provisions of the Permits, the Manual, and Federal, State and local regulations and requirements as set forth therein. As authorized by the contract Special Provisions, retention of the maximum amount of the proposed penalties will be deducted from the monies due the Contractor in the next monthly progress pay estimate.

[Conditions for release of retention]

Funds may be retained by the Department until final disposition has been made by the RWQCB as to the penalties. Note that this is in addition to the 25% retention of the monthly progress pay estimate for nonconformance with contract special provisions that was indicated in my

Sample letter B-5

Mr. Tom Smith
Mr. Richard Jones
December 17, 2003
Page 2

December 8, 2003 letter.

If you have any questions or concerns regarding this matter, please contact me at (123) 456-7890.

Sincerely,

ORIGINAL SIGNED BY

Resident Engineer

Attachment

c: Structure Representative
 SWPPP Inspector
 Area Construction Engineer
 Construction Storm Water Coordinator

File 5.4, 20
NRCO

DEPARTMENT OF TRANSPORTATION

DISTRICT 3
OROVILLE CONSTRUCTION
2060 THIRD STREET
OROVILLE, CA 95965
PHONE (530)
MOBILE (530)
FAX (530)



*Flex your power!
Be energy efficient!*

December 17, 2003

03-123456
03-GLE-32KPR7.7/R9.6
Fed No
Replace Sandy Creek Bridge

CT 5.4A.182

M & M Construction
1234 56th Street
North Highlands, CA 95660

Attn: Mr. Tom Smith, Water Pollution Control Manager (WPCM)
Mr. Richard Jones, Project Manager

Subject: Five-Day Notice to Remedy Defaults of Contract, and Notice of Pending
Termination of Control of Contract

Gentlemen:

[Description of Nonconformance or discharge, reference to contract Special Provisions, or other relevant documents]

On December 15, 2003 M&M Construction was issued a letter stating that the Replace Sandy Creek Bridge project was in temporary suspension. The contractor was directed to immediately suspend all construction activities on the project and remove all concrete residues from the stream bank and dry streambed and properly dispose of this waste off of the State right of way. Contractor was also directed to complete all items of Water Pollution Control nonconformance noted in previous letters to the contractor (December 1, 2003 and December 8, 2003) prior to the Contractor being allowed to resume work. The letter also informed the contractor that failure to substantially complete clean up the discharge within 48 hours of the receipt of the letter might result in further contract sanctions including termination of control of the contract. The contractor has made no apparent effort to this date to complete the cleanup of the concrete spill, or provide any proposed schedule for the cleanup.

[Reference Standard Specifications and enforcement action]

Unless the contractor completes all cleanup of the referenced concrete spill and the contract nonconformance items included in the letters of December 1, 2003 and December 8, 2003 within the next 5 working days, in accordance with Section 8-1.08 of the Standard Specifications, the

Mr. Tom Smith
Mr. Richard Jones
December 17, 2003
Page 2

Department will start the termination process.

[All five-day notices and termination of control letters must include the following language]

Your default may subject you to a review of your responsibility to perform future work with the Department.

If you have any questions or concerns regarding this matter, please contact me at (530) 123-4567.

Sincerely,

ORIGINAL SIGNED BY

Resident Engineer

c: Area Construction Engineer
 Construction Field Coordinator
 District NPDES Coordinator
 Construction Storm Water Coordinator
 Contractor's Surety Company

File 5.4, 20
NRCO

Appendix C

DEPARTMENT OF TRANSPORTATION**CONSTRUCTION PROGRAM**

1120 N STREET, MS 44

P O BOX 942874

SACRAMENTO, CA 94274-0001

PHONE (916) xxx-xxxx

FAX (916) xxx-xxxx

TDD (916) xxx-xxxx

*Flex your power!
Be energy efficient!*

November 13, 2003

Mr. Gary M. Carlton
Executive Officer
California Regional Water Quality Control Board
Inland Valley Region
3443 Routier Road, Suite A
Sacramento, CA 95827

Dear Mr. Carlton:

Subject: Notice of Potential Non-Compliance for State Route 123 between Smith Road Exit
and Bob Road Exit in Marysville, California-Notice of Construction #55332211144

[Reference Permit requirement to report discharge]

Pursuant to Section c.2.3.a of NPDES Permit CAS000003, Water Quality Order 99-06-DWQ, the following notification is being submitted, within the required 14 days, for a discharge to Little Butte Creek during a severe storm on November 2, 2003. Although the Department and its Contractor, C.C. Diligent, Inc., fully complied with all the requirements of Water Quality Order 99-06-DWQ, a discharge potentially exceeding water quality standards may have occurred. The storm event on November 2, 2003 was of greater intensity than a 25-year 24 hour rainfall event with accumulations reported at the nearby Beale Airforce Base of 3.33 inches in 24 hours. As a result of this storm, local officials have reported extensive flooding of the local grammar school and more than fifty homes and business in the City of Marysville.

[List BMPs in place at time of discharge]

As required by Water Quality Order 99-08-DWQ and Caltrans Statewide Storm Water Management Plan, the design and construction of every project requires the selection and implementation of Best Management Practices (BMPs) to prevent an reduce discharges from the construction of state highways in California. The design of the expansion of State Route 123 included numerous permanent and temporary construction site BMPs. The permanent BMPs included; sediment basins, seeding and planting, geotextiles, outlet protection/velocity dissipation devices, mats/plastic covers and erosion control blankets, and top and toe of slope diversion berms. These facilities assisted in the control of the significant storm water run off and

flooding from this severe winter storm.

Furthermore, as required by Water Quality Order 99-06-DWQ, Caltrans Statewide Storm Water Management Plan, and Caltrans contract Special Provisions; the Storm Water Pollution Prevention Plan (SWPPP) was prepared by C.C. Diligent, Inc. and approved by the engineer on May 30, 2002. This SWPPP included numerous BMPs, an implementation schedule, and a BMP inspection and maintenance program. The storm water soil stabilization and sediment control related BMPs selected and installed by the contractor included: straw mulching, check dams, silt fences, fiber rolls, gravel bag drain inlet protection, street sweeping, wind erosion control and stabilized construction entrance/exit and roadways. Numerous other non-storm water, waste management and materials pollution control BMPs were also implemented on the project but are not directly related to the subject of this letter.

[Reference the verbal notification of RWQCB within 48 hrs]

The enclosed notice of discharge report from the contractor dated November 9, 2003, as required by the SWPPP, provides a detailed explanation of the site BMPs in place during the storm. This report is similar to the verbal report I provided to you on November 3, 2000, which was within 48 hours of the discharge as required by Water Quality Order 99-06-DWQ and Caltrans Statewide Storm Water Management Plan. As noted in these reports, the contractor implemented many emergency measures during the rainfall event and the subsequent flooding that occurred at the construction site to limit and minimize the duration and severity of the discharge. I consider many of the actions taken by the Department and the contractor to be heroic considering the severity of the storm. The engineer approved additional BMPs recommended by the contractor in his amended SWPPP and required additional BMPs as stated in the enclosed letter to C.C. Diligent, Inc. on November 12, 2003.

[Describe the nature of discharge]

The primary cause of the failure of the storm water BMPs was the washing away of the top of slope diversion berms and subsequent washout of the sediment basin and silt fence. The loss of the top of slope diversion berms resulted in significant sheet flow along the embankment; and created rills and gully erosion. The unexpected large amounts of sediments and water flow into the sediment basin resulted in its failure and the storm water discharge into Little Butte Creek. During my visual inspection of the creek at the time of the storm and discharge event, I noticed widespread sediment discharges of sediment to the creek both upstream and downstream of the project site. The contribution of sediment to the creek from this project did not appear to have an impact to the existing water quality.

[Describe the actions necessary to achieve compliance and a time schedule for implementation]

The contractor has recommended many additional BMPs including; double rows and bags stored for emergency measures to replace or increase the number of bags for slope diversion berms; and the addition of more fiber rolls along the slopes. Furthermore, the Department required the use of erosion control straw mats on all slopes greater than 2:1. The Department has also required that during severe weather events that enhanced inspections are conducted by the contractor and that appropriate construction equipment is onsite or available on an emergency basis. The

Mr. Gary M. Carlton
November 13, 2003
Page 3

contractor installed all of these measures prior to a subsequent storm that occurred on November 10, 2003. An amendment to the SWPPP was also completed by the contractor and approved by the engineer on November 12, 2003.

If you should have any questions or wish to visit the site please contact me at (123) 456-7890.

Sincerely,

District NPDES Coordinator

Enclosure

C: Project Construction Engineer
 Project Resident Engineer
 District Construction Storm Water Coordinator
 File 5.4, 20

DEPARTMENT OF TRANSPORTATION

CONSTRUCTION PROGRAM

1120 N STREET, MS 44

P O BOX 942874

SACRAMENTO, CA 94274-0001

PHONE (916) xxx-xxxx

FAX (916) xxx-xxxx

TDD (916) xxx-xxxx

*Flex your power!
Be energy efficient!*

June 25, 2003

Gary M. Carlton
Executive Officer
Inland Valley Regional Water Quality Control Board
3443 Routier Road, Suite A
Sacramento, CA 95827-3003

Subject: Response to Notice of Violation, State Route 123, West Sheldon Bypass

Dear Mr. Coleman:

[Reference the RWQCB enforcement action and letter]

The Department of Transportation (Department), Inland Region is in receipt of your May 19, 2003 "Notice of Violation (NOV) of the National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000003, (Order No. 99-06-DWQ) for Storm Water Discharges from the State of California, Department of Transportation Properties, Facilities and Activities". Please be assured that the Department takes very seriously our commitment to environmental quality and public safety. The actions cited in the NOV are contrary to our policies, practices and training, and in fact represent an isolated incident compounded by unusual and unpredictable climatic conditions complicated by challenging soils and archeological findings. The Department is taking proactive measures to ensure that similar situations do not reoccur and that all construction activities are conducted in full compliance with our NPDES permit and other applicable environmental laws and regulations.

[General background of the project and the basis for the NOV]

Protective and costly erosion and sediment control measures were implemented by the Department over the past two years demonstrates our genuine commitment to water quality. At the beginning of the 2002-2003 rainy season, the Department fully implemented a comprehensive erosion and sediment control program for all disturbed soil areas of the construction project. This effort consisted of various best management practices (BMPs) widely accepted as Best Conventional Technology (BCT). Some of these BMPs included the installation of hydraulic mulch, deployment of 9-inch and 20-inch fiber rolls, silt fence, erosion control blankets, outlet protection devices, check dams, storm drain inlet protection, and multiple detention basins. All of these BMPs were installed in accordance with the Department's Permit as stated in the Statewide Storm Water Quality Practice Guidelines (Practice Guidelines). Most of these efforts fell victim to a very large and highly intensive storm event (over six inches of rainfall in 24 hrs. with 4 inches occurring in 2 hrs.) on November 8, 2002. Nearly every slope on the construction site was striped of its erosion control application, fiber rolls, and perimeter protection; detention basins filled to capacity with sediment. The storm event resulted in a

sediment-laden discharge to Simpson Creek, and a taxpayer loss of approximately \$300,000. However, this discharge did not appear to decrease the water quality due to the large amounts of sediment in the creek from the severity of the storm.

In response to this devastating storm event, the Department immediately met with your staff to devise an approach to repair and re-stabilize the damaged project areas. The Department's contractor mobilized heavy equipment (e.g., bulldozers, excavators, etc.) and re-graded, compacted, and track walked storm-battered areas. Fiber rolls and perimeter protection were repaired or replaced, and sedimentation basins were cleaned out. Because the previous conventional erosion control application failed so catastrophically, a robust combination of mechanically-bonded fiber matrix and coconut straw erosion control blankets were used to fortify all exposed areas at a significant expense (approximately \$500,000 from November precipitation). Further, two chitosan-based flocculation, pump, and filtration treatment units were installed to dewater the basins after 72 hours of the storm event to clarify unsettlable solids before discharge into Simpson Creek.

Once again, and similar to the November event, a series of forceful storms pounded the construction site between December 12-19, and destroyed approximately 70% of the site's recently repaired BMPs, resulting in another taxpayer loss of approximately \$200,000. Since the December storm events, critical project areas have been promptly repaired and were properly maintained throughout the rainy season, including the time around your staff's April 14, 2003, inspection. The April 14 inspection followed another extremely intense storm cycle on April 12 and 13, 2003, (2.8 inches in 24 hours) resulting in widespread BMP damage.

BMP loading and damage are usual and customary results of intense precipitation events. Repair and maintenance of storm loaded or damaged BMPs generally take several days to complete. It is generally accepted that temporary BMPs are designed and deployed to provide discharge protection during a typical storm event. The April 13-14 storm event was close to the 30-year average for the entire month of April. Precipitation patterns this past rainy season were extremely difficult to predict, and have not been characteristic of historical trends. All reasonable and in many cases exceptional measures were taken to prevent and minimize offsite discharges; however, such measures were unfortunately compromised by extraordinary meteorological events.

Notwithstanding the above conditions, the Department has demonstrated a commitment to water quality throughout this challenging construction project. Construction and NPDES staff has worked closely and openly with your Board's inspectors to ensure the most protective and appropriate BMPs were utilized. We routinely consulted your staff and provided them with timely notification as required by the permit.

[Response to the items requested in the NOV]

The information you requested from our Department in the NOV letter are detailed below.

The NOV requires the Department to immediately do the following:

- **Ensure the filtration system does not discharge pollutants downstream in violation of NPDES Permit No. CAS000003.**

The Department discontinued the use of the filtration system when it became apparent the system was not performing properly. Consequently, the Department required the contractor to service the units including replacing the pumps, changing the flocculent, sand media, and filter cartridges. Following this service, the effluent water quality improved significantly.

However, it is necessary to emphasize that the treatment and filtration system represents an emerging and innovative technology that significantly exceeds the construction permit standard of BCT. While the Department's contractor made all reasonable efforts to operate the treatment units at their highest efficiencies, it should be expected, if not tolerated, that there will be times and conditions when their operation will be compromised by unforeseen or confounding circumstances.

As with all storm water BMPs, understanding their proper use and deriving their maximum benefit is an iterative process. Without a doubt, portable construction site flocculation and filtration devices are still early in their development stages. As this technology matures, and as the Department, Regional Boards, and others gain additional experience in its application, use and limitations will be better understood, and improved consistency in water quality will be achieved.

The Department has dedicated unprecedented public resources to the protection of water quality during this challenging construction project. The Board's collaboration with our Department on this specific application with the goal of improving the performance of the filter/floc system has been invaluable. The Department welcomes the continued opportunity to partner with the Board's staff in an effort to protect and enhance the water quality of this and other projects.

- Develop and implement a written storm water monitoring program that documents the discharges of the filtration system and ensures storm water discharges are in compliance with NPDES Permit No. CAS000003.

The Department has undertaken the development of a systematic water quality monitoring program. This requirement will necessitate additional time to implement to ensure that valid data is collected. However, as the rainy season has ended and no further discharges/runoff events are anticipated, immediate implementation is less critical. The Department has required the contractor to develop and provide an expanded and comprehensive operation and maintenance manual along with a reliable monitoring program. Once developed, the Department will provide the monitoring plan to your staff. The Department anticipates the plan will be completed well in advance of the next rain season.

The NOV requires the Department by June 30, 2003, to submit the following information:

- **“A Notice of Potential Non-Compliance report for the discharge of sediment and sediment-laden water observed during the 14 April 2003 inspection. This report must contain an evaluation of the duration and volume of the discharge.”**

In response to the requirement to provide a Notice on Potential Non-Compliance and to evaluate the duration of the discharge, the Department has made following determination:

A Notice of Potential Non-Compliance for the April 14, 2003, discharge was previously submitted to the RWQCB dated May 28, 2003. The Department is in the process of evaluating the potential duration and/or volume of discharge for the storm cycle of April 12 through April 14, 2003, as required by the NOV. Accurate and reliable engineering estimates (subject to further refinement) will be provided to the RWQCB for review.

- **“A report outlining what steps the Department will take to bring the project site into compliance and abate the current site conditions that pose a threat to water quality. This report should include a work plan that out lines the methods The Department will employ to ensure that future contractors and construction related activities comply with the site-specific SWPPP and comply with The Department’ NPDES permit requirements.”**

In response to the requirement to describe the steps to bring the project into compliance: The Department has initiated the following activities:

The use of the filter and basin system represents BCT and is an appropriate practice when properly implemented and controlled. The standard practice for the Department is to operate the filter system only to dewater the basins 72 hours after a precipitation event. Under routine storm conditions, most of the water that drains to the basins will infiltrate or discharge through the outlet device. . After precipitation events, storm water that has not infiltrated will be dewatered after 72 hours to ensure that the basins are prepared for the next storm event utilizing the pump/filtration BMP. The resulting discharge of treated water will be of high quality. Further, the Department staff will ensure that the contractor will continue to fully implement the BMPs identified in SWPPP.

To ensure the project site is and remains in full compliance with the Statewide NPDES Permit and other environmental requirements, the Department either has completed or is committed to undertaking the following activities prior to the rainy season of 2003-2004:

The contractor has been on site three times during the week of April 21, 2003 to service modify and improve the operational performance of the filter units. The contractor replaced the sand media in the filtration unit. Additionally, the contractor has installed 3 jel-floc bags in the intake hose. This has resulted in additional water quality improvement. A maintenance schedule has been established to change the 3 jel-floc bags and the cartridges at regular intervals based on treatment volume. This improved operation and maintenance will allow for a consistently high quality effluent to be produced.

The disturbed soil areas that are not actively being worked on will be hydro-seeded no later than September 15th. The type of seed mix will be that which is currently in use on the site. This mix has proven to be a vigorous grower and provides rapid, high-density vegetative cover.

Erosion control blankets will be utilized on Lonely Oak Road from the temporary connection to existing Highway 123. Blankets will also be utilized above culverts, on steep slopes, and on other locations where the high potential for erosion may exist.

Fiber rolls will be installed on the steep/long slopes as presented in the contractor's SWPPP.

Asphalt concrete will be placed on the new highway prior to the onset of the rainy season, except at the Mason Way undercrossing and Simpson Creek Structures, which will still be under construction. Permanent drainage facilities will be in use where the pavement is complete thereby greatly improving storm water quality.

The Department estimates the costs of installing, repairing and maintenance of the construction site BMPs including the operation of the filtration system for the rainy season 2003-2004 to be:

Cost of permanent erosion control based on contract item prices, 26 HA - \$140,000
Purchase and install erosion control blankets, 45,000 m² - \$120,000
Purchase and install fiber rolls, 10,000 m - \$100,000
Purchase and install silt fence, 2,000 m - \$20,000
Purchase and install drainage inlet protection, 150 each - \$15,000
Filtration System, 2 each for 6 months - \$100,000
Maintain Filtration System, replace jel-floc, cartridges, sand media - \$15,000
Maintain erosion and sediment controls throughout winter, 6 months - \$45,000
Construct drainage basins - \$70,000
Construct rock lined ditches, 3000 m - \$40,000

Total Estimated Cost for the 2003-2004 rainy season - \$665,000.

- **“A written summary calculating the duration and amount of sediment-laden water discharged, the events that led to the discharge and corrective and cleanup actions taken.”**

In response to the requirements to provide a summary of the estimate of both amount and duration, the Department provides the following:

The Department is in the process of evaluating the potential duration and/or volume of discharge on April 14, 2003, as required. The Department is investigating and gathering additional data in order to provide accurate and reliable engineering estimates of both the volume and duration of the event and will provide them for the RWQCB's review.

- **“ A report calculating the approximate cost to appropriately operate and maintain all erosion and sediment controls at the site including the costs to operate and maintain an effective filtration system or series of systems at the project site. This**

report should contain all costs (material, labor, hauling, disposal, etc.) associated with these activities.

In response to the requirements to report operational costs of the filtration and erosion control activities, the Department provides the following:

During the project development process an estimate of the costs to fully implement the NPDES permit provisions for temporary, permanent and treatment BMPs was made. These estimates were based on previous construction experience from similar projects. Based upon these estimates appropriate funds were authorized by the California Transportation Commission for this project. To date, the project required an additional one million six hundred thousand dollars (\$1,200,000) in storm water BMP expenditures. These expenditures include the costs of the additional basins, replacement and /or maintenance of temporary BMPs and the use of the filtration system. NPDES compliance for the rainy season of 2002-2003 is estimated to approximately nine hundred thousand dollars (\$900,000).

The above cost estimates are in addition to those included in the bid item under the contract originally developed for storm water NPDES compliance, and represent unanticipated (non budgeted) expenditures. With respect to the estimate of labor costs, the Department does not control the specific costs associated with labor under the provisions of the general construction contract. Labor costs are an included item under the contract. The Department staff time for implementation, inspection, consultation, and maintenance of the innovative treatment dewatering BMP is estimated to be approximately 400 hours. Should the RWQCB determine a more precise cost breakdown is necessary, additional time will be required to consult with our contractors and subcontractors to develop these estimates.

- **“A report describing the steps The Department will take to ensure future reporting on non-compliance conditions will comply with the requirements contained in NPDES Permit No. CAS00003 and the Department’ SWMP.”**

In response to the requirements to describe steps taken to ensure proper reporting of non-compliance issues, the Department has initiated the following actions.

The Department will provide Resident Engineers and other construction personnel refresher training on the requirements of the Department NPDES permit No, CAS000003 and CAS000002. The training will provide construction staff information on what to report, with an emphasis placed on the specific reporting requirements, including telephone numbers, the names of the persons to whom to report storm water or non-storm water discharge should be made, as well as step-by-step reporting procedures. Additionally, the Department construction supervisors will include a discussion on NPDES reporting procedures during expanded staff meetings.

The Department has the highest commitment to the principles of environmental protection and enhancement through the full implementation of the SWMP and full compliance with our NPDES permit. The Department will remain proactive and vigilant on NPDES issues and in the event a situation of non-compliance occurs, we shall take prompt action to correct the situation

Mr. Gary M. Carlton
June 25, 2003
Page 7

and report such conditions to the Board.

We trust that this response adequately addresses the NOV requirement for the submittal of information to the Board regarding this issue. Should you have any questions, comments or require additional information regarding this response, please contact me at (123) 456-7890.

Sincerely,

Chief
Inland Region NPDES/Storm Water Quality Branch
Project Development Division

cc: Project Resident Engineer
Project Construction Engineer
District NPDES Coordinator
District Construction Storm Water Coordinator
Project SWPPP Inspector

DEPARTMENT OF TRANSPORTATION**CONSTRUCTION PROGRAM**

1120 N STREET, MS 44

P O BOX 942874

SACRAMENTO, CA 94274-0001

PHONE (916) xxx-xxxx

FAX (916) xxx-xxxx

TDD (916) xxx-xxxx

*Flex your power!
Be energy efficient!*

December 3, 2003

Gary M. Carlton
Executive Officer
Inland Valley Regional Water Quality Control Board
3443 Routier Road, Suite A
Sacramento, CA 95827-3003

RESPONSE TO NOTICE OF VIOLATION OF 11 NOVEMBER 2003; REQUEST FOR TECHNICAL REPORT

Dear Mr. Carlton:

[Reference regulatory action and required Technical Report attached]

Attached please find the I-50 Silver Vein Project Technical Report as required by the Notice of Violation dated 11 November 2003, for discharge of sediment, aggregate shoulder backing and construction waste from the project site. This technical report provides detailed information as requested in your letter of 11 November 2003.

[Other pertinent information not specifically requested in the NOV]

Subsequent to the preparation of this report, the Department terminated the contract with the contractor, Kenington Atlantic Company, for the I-50 Silver Vein Project. An addendum (Attachment 4) to this report has been included to present the Department's work plan for water pollution control on the project due to contract termination.

If you or your staff has any questions, please contact me at (123) 456-7890.

Sincerely,

District Director

Concurrence:

Chief, North Region Construction_____
Construction Mgr._____
Senior Resident Engineer

Enclosure: I-50 Silver Vein Project Technical Report

Sample C-3 Technical Report

Mr. Gary M. Carlton
December 3, 2003
Page 2

c: SWRCB
Project Manager, Kensington Atlantic Co.

[Certification - when required by the regulatory action]

Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

District Director
Department of Transportation - District 13

Date

On 11 February 2002 the California Regional Water Quality Control Board, Central Valley Region, (RWQCB) issued a Notice of Violation (NOV) to the Department for its construction project on Interstate 50 in Placer County, from Niagra Overhead to Dutts Lake Undercrossing (I-50 Silver Vein Project), for non-compliance with the *National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000003 (Order No. 99-06-DWQ) for Storm Water Discharges from the State of California, Department of Transportation (Department) Properties, Facilities, and Activities* (Department's Permit).

This report is being submitted in response to the request in the NOV for a Technical Report. Numbering within the Technical Report is consistent with the items enumerated in the RWQCB letter.

— **A report outlining what steps the Department will take to bring the project site into compliance and abate the current site conditions that pose a threat to water quality. This report should include a work plan that outlines the methods the Department will employ to insure that future contractor and construction related activities comply with the site specific SWPPP and comply with the Department's NPDES permit requirements. The work plan should contain a detailed description of the enforcement remedies the Department intends to utilize throughout the duration of this project.**

For its Construction program, the Department ensures compliance with the Department's Permit by requiring its personnel and contractors to comply with the specifications, standards and working details in the NPDES permits and the Department's documents referenced in Attachment 1.

The Department's work plan, to bring the I-50 Silver Vein Project site into compliance and abate the site conditions that pose a threat to water quality, is based on achieving and maintaining compliance with the permits and documents identified in Attachment 1.

The Department's work plan consists of the following four elements:

1. Achieve project compliance and abate conditions at specific locations that were reported as noncompliant in the RWQCB inspection reports attached to the NOV.
2. Maintain compliance project-wide during the current stage of construction.
3. Maintain compliance project-wide for the duration of the project.
4. Remedies for contractor non-compliance.

Steps required to complete the four elements of the work plan are described in the following sections.

1. Achieve Project Compliance and Abate Conditions At Specific Locations That Were Reported As Noncompliant In The RWQCB Inspection Reports Attached To The NOV.

The following table summarizes the actions taken by the Department to achieve compliance and to abate the site conditions that posed threats to water quality as identified in the RWQCB inspection reports attached to the NOV. The table also identifies planned actions at those locations, if any.

BEALE AREA	Location/Extent:	South-facing Slope – Eastbound I-50 between Beale and Rowle railroad crossing (“A” 118+50 to 131+75)
	Reported Status:	Sediment discharges to Canyon Creek
REPORTED CONDITION	ACTION TAKEN	
Uncontrolled Concentrated Runoff From Freeway	Roadway runoff is channelized along temporary k-rail at the top of slope to various slope drains that convey the water down to the toe of slope.	
Slope Erosion	A rolled erosion control product (blankets) covers all of the disturbed soil areas from “A” 118+80 to “A” 131+75.	
Ineffective Sediment Controls	Sandbag check dams are installed at the toe of slope drainage swale. A conventional linear sediment barrier is ineffective in this situation because of the severe gradient along the toe of slope.	
Lack of Maintenance	All BMPs are inspected before predicted storms to ensure proper maintenance. During extended storms, BMPs are inspected every 24 hours. After storms, BMPs are inspected to evaluate the BMPs in place, especially the adequacy of the check dams.	

DITMORE SLOPE	Location/Extent:	At Ditmore on eastbound I-50 (“C” 37+00 to 39+00)
	Reported Status:	Sediment discharges to tributary of Canyon Creek
REPORTED CONDITION	ACTION TAKEN	
Slope Erosion	A temporary dike constructed of sandbags has been placed at the top of slope to convey water into a down drain pipe away from the disturbed soil area.	
	In addition to the seed and hydromulch mixture, a rolled erosion control product (blankets) covers all of the disturbed soil areas.	
	Fiber rolls have been placed along level contours across the disturbed soil areas every 4 meters.	
Ineffective Sediment Controls	A fiber roll has been placed along the toe of slope as a linear barrier.	
	The drainage swale at the toe of slope has been stabilized with loose rock.	
Lack of Maintenance	All BMPs are inspected before predicted storms to ensure proper maintenance. During extended storms, BMPs are inspected every 24 hours. After storms, BMPs are inspected to evaluate the BMPs in place.	

HYACK AREA	
Location/Extent: North-facing Slope – Westbound I-50 at Dutts Lake Interchange (“B” 76+40 to 77+00)	
Reported Status: Slope erosion and sediment discharges; oil spills	
REPORTED CONDITION	ACTION TAKEN
Soil Erosion	<p>Loose straw has been placed on the face of the disturbed soil area. Snow covers the area at this time.</p> <p>Erosion appears to be controlled, but as the snow melts, this disturbed soil area will be re-evaluated for additional measures that may be required.</p>
Ineffective Sediment Controls	<p>Straw bales and silt fences are installed below the disturbed soil area. These BMPs are partially covered with snow. As the snow melts, this disturbed soil area will be re-evaluated for additional sediment controls that may be required.</p>
Oil Spills	<p>Soils contaminated with oil have been removed from the project site and transported to the contractor's yard off the Department’s right of way. The contaminated soil is now the property of the contractor.</p>

WESTBOUND I-50	
Location/Extent: Hyack to Beale	
Reported Status: Discharge of sediment and shoulder backing	
REPORTED CONDITION	ACTION TAKEN
Ineffective Sediment Controls	<p>All silt fence and straw bale check dams have been removed and replaced with sandbag check dams where appropriate.</p>
	<p>Along the roadway where the finished pavement section is constructed, asphalt dike and stabilized trench have been placed per plan to convey water in a non-erosive manner to existing drainage systems and watercourses.</p>
	<p>Along the roadway where the asphalt concrete leveling course is in place, the existing roadside drainage ditches have been re-graded and sandbag check dams have been placed as appropriate.</p>
	<p>This area will be monitored to evaluate the adequacy of BMPs in place. Temporary stabilization of the drainage swale and shoulder backing may be necessary.</p>

WESTBOUND I-50 Location/Extent: Green Canyon On-Ramp Reported Status: Inappropriate disposal of saw-cutting slurry; discharge of sediment and aggregate base to drainage inlet	
REPORTED CONDITION	ACTION TAKEN
Sediment Control	Asphalt concrete dike has been placed along the right shoulder of the on-ramp to control the flow of water. Check dams have been installed in drainage swale.
Lacking Concrete Waste Management	Please see response to NOV Item #2 regarding disposition of concrete wastes accumulated on the project site and work plan for future concrete waste management.

2. Maintain Compliance Project-Wide During the Current Stage of Construction

To maintain compliance during the current stage of construction, the Department will ensure that the following steps are taken:

- For the roadway sections that have been completely rehabilitated with new Portland Cement Concrete (PCC) pavement, ensure that asphalt concrete dikes and modified trenches have been placed at the planned locations. As part of the pre-, during- and post-storm inspections, evaluate these locations to determine if additional dikes and/or stabilization of drainage areas are necessary. If changes are needed based on inspections, install permanent dikes and/or temporarily stabilize conveyances as soon as practicable.
- For the roadway sections that have been partially rehabilitated (existing concrete has been overlaid with 45-310 mm of asphalt concrete pavement as a leveling course), ensure that defined drainage swales and installed sandbag check dams are functioning properly. If specific areas of shoulder backing show signs of erosion from a storm event, the damaged area will be regraded and stabilized as soon as practicable prior to future storm events.
- Inspect all areas altered by construction and inspect implemented BMPs. Add/revise and/or maintain BMPs as necessary. Inspection shall include both sides of the roadway along its entire length from Niagra Overhead to Dutts Lake Undercrossing.

3. Maintain Compliance Project-Wide for the Duration of the Project

To maintain compliance for the duration of the contract (estimated through November 2005), the Department will ensure that the following steps are taken:

- For the remaining work, the Department will require the contractor to submit a schedule indicating the start and finish dates of pertinent construction activities, including the placement of asphalt concrete dike and modified trench. An implementation schedule will be included to indicate the dates that the contractor will be 25 percent, 50 percent, and 100 percent (leading up to the rainy season) complete with all erosion and sediment controls required both permanent and temporary. Where roadway rehabilitation work and/or earthwork cannot be completed in its entirety prior to the start of the project rainy season, the schedule must indicate temporary measures to be implemented, including

temporary soil stabilization, temporary sediment controls, temporary dike or other conveyances at the top of slope and edge of pavement, and temporary stabilization of drainage conveyances and/or shoulder backing. The schedule will also show when required erosion control materials (both permanent and temporary) are to be delivered and stored on site. Sufficient time for alternative material purchases shall be scheduled in the case that materials cannot be delivered in a timely manner.

- The Department will review the schedule to ensure that it represents a realistic Critical Path Method (CPM) schedule for the project. The Department will require the contractor to conduct construction activities within the timeframes of the approved schedule. The Department will ensure that winterization activities are completed and that BMPs are in place prior to the rainy season.
- The contractor will be required to modify the project Storm Water Pollution Prevention Plan (SWPPP) to incorporate the requirements of this work plan including an updated schedule.
- The Department will evaluate planned locations of remaining asphalt concrete dike and modified trench to determine the adequacy of controlling erosion. Drainage systems will be revised as necessary.
- Non-rainy season requirements of applicable soil stabilization measures and sediment controls will be implemented as appropriate. Sufficient materials shall be stored on site for temporary controls required in the event that rain is forecast.
- The Department will inspect all areas altered by construction and all implemented BMPs. The contractor will be required to implement, inspect, maintain, and repair BMPs as identified in the approved SWPPP. The inspection program in the SWPPP will require inspections before and after storm events, at 24-hour intervals during extended storm events, and as defined for the individual BMPs implemented on the project.
- The Department will coordinate with the Storm Water Task Force so that compliance inspections are conducted at a minimum frequency of monthly.
- For the work plan related to concrete waste management, refer to the response to NOV Item #2.

4. Remedies For Contractor Non-compliance.

The Department will use the following contract remedies to ensure the contractor's compliance with the Department's Permit and this work plan for the duration of the project. The Department retains the right to exercise the following remedies based on the Engineer's evaluation of appropriateness, potential for discharge to a water body or storm drain, and public and worker safety. Potential contract remedies include:

- Discharge any subcontractor or person employed by the contractor who the Department deems to be incompetent or who acts in a disorderly or improper manner (Standard Specifications, Section 5-1.12).
- Immediately suspend any work that would exacerbate the non-compliance or interfere with or delay the contractor's efforts to correct the deficiency (Standard Specifications, Section 8-1.05).

- Retain an amount equal to 25 percent of the estimated value of the contract work performed during the first estimate period that the contractor fails to conform to the Water Pollution Control special provision of the contract (Special Provisions, Section 10-1.02).
- Hold the contractor responsible for all costs and liabilities assessed the contractor or the Department as a result of the contractor's failure to comply with the Water Pollution Control special provision of the contract including, but not limited to, compliance with the applicable provisions of the NPDES Permit(s), the Department's documents referenced in Attachment 1, and Federal, State and local regulations (Special Provisions, Section 10-1.02).

- A report providing a detailed evaluation of all concrete waste management and disposal practices that have occurred on the project to date. This report should contain information on the estimated quantity of all concrete waste generated on the project (i.e., saw cutting, grinding, equipment wash-out waste) and how and where the waste was disposed. In cases where the Department previously identified inappropriate disposal of concrete waste, the report should include a description of the steps taken by the Department at the time to clean up and abate the discharge of waste. The report should also detail the steps the Department will take in the future to clean up and abate discharges of concrete waste from the project.

For its Construction program, the Department ensures compliance with concrete waste management and disposal requirements of the Department's Permit by requiring its personnel and contractors to comply with the specifications, standards and working details in the NPDES permits and the Department's documents referenced in the following table. Relevant excerpts from these documents are provided in Attachment 2.

DOCUMENT	SECTION	TITLE
Department's Permit	A.7	General Discharge Prohibitions
	E.1	General Requirements
	H.8.b	Construction Program Management
Statewide Construction Permit	A.5.b(2) A.5.b(5)	SWPPP: Pollutant Source and BMP Identification
Storm Water Management Plan (SWMP)	4.5	Construction Site BMPs (Category II)
	B.4.2	Approved BMPs – Category II: Waste Management
Storm Water Quality Practice Guidelines (SWQPG)	4.5.10	Waste Management: Concrete
The Department's Storm Water Quality Handbooks		See Attachment 2.

The Department's evaluation of concrete waste management and disposal practices that have occurred on the project, and the work plan with the steps The Department will take in the future to clean up and abate discharges of concrete waste from the project, are based on achieving and maintaining compliance with the approved policies and practices identified in these documents.

In response to the NOV, the Department requested information regarding concrete waste management on the project from the contractor in letters dated February 22, 2002 and March 22, 2002. Copies of these letters are provided in Attachment 3. To date, the Department has received two letters from the contractor in response to its requests. Copies of these letters, dated March 11, 2002 and March 28, 2002, are also provided in Attachment 3. Owing to the lack of a substantive response from the contractor for quantitative information about concrete waste volumes and disposal costs, the Department has estimated these values based on project records and industry cost standards.

Estimate of Concrete Waste Generated on the Project

The following activities on the project site generated PCC waste, e.g., PCC waste water and PCC slurry that may have involved temporary storage on the Department's right of way:

- Washout of PCC transit trucks and paving equipment
- Saw-cutting with self-propelled equipment
- Saw-cutting by hand
- Grinding to meet California Test 526 and Profile Index requirements

These concrete wastes are regulated under the Department's Permit; therefore, the Department requires that temporary storage and disposal be in conformance with the specifications and BMPs in Attachment 2.

The Department's Standard Specifications Section 40-1.10 requires the permanent disposal of concrete wastes on the project site generated from profile grinding to be disposed of outside the highway right of way in accordance with Section 7-1.13. The Department may specify the location and manner for permanent disposal of PCC wastes from grooving and grinding operations in the project "Materials Information" handout that is available to contractors. The "Materials Information" handout for this project does not identify a location or manner for disposal of concrete waste available to the contractor. If the handout does not specify a location/manner for permanent disposal of these wastes, the contractor is responsible for arranging for permanent disposal off the highway right of way per the Department's Standard Specifications, Section 42..

The Department's Standard Specifications and the Special Provisions for the I-50 Silver Vein Project do not authorize storage or disposal of concrete wastes on the project site from grinding to prepare for recessed traffic striping.

Neither the California Water Code, the Department's Standard Specifications nor the Special Provisions for the I-50 Silver Vein Project authorize storage or disposal of concrete wastes on the project site from offsite PCC batch plants or other offsite sources.

Solid PCC waste on the project was generated from concrete barrier demolition, replacement of concrete pavement, and the removal of approach slabs and PCC pavement.

The following table estimates the quantity of PCC waste that had been generated or temporarily stored on the project site as of the date of the NOV.

- Since the PCC wastes deposited in the two temporary storage pits represent commingled wastes from different activities (e.g., saw-cutting, equipment washout, grinding operations, etc.) the estimates are based on the volume and type of waste material that was removed from the pits, rather than the possible origin of the waste. Therefore, estimated volumes include all PCC wastes deposited in the pits, including those transported from the contractor's offsite PCC batch plant. These volumes are based on estimates from transportation manifests and project records. Copies of transportation manifests are retained in the project records.
- The table also estimates the volumes of PCC waste from various operations that were not deposited in one of the two temporary storage pits. These volumes represent wastes that were not handled properly by the contractor initially, but were promptly abated by the Department as described in the discussion of disposal of PCC wastes on the project.

Estimated Volume of Concrete Wastes

PCC Source/Waste			Estimated Quantity
a.	Temporary Storage Pits (commingled wastes): Station 41+00 on the B-line (approximate) Station 137+00 on the A-line (approximate) These quantities include wastes from the following: Washout of PCC transit trucks and paving equipment Saw-cutting Grinding to meet California Test 526 and Profile Index Requirements ¹ PCC Waste from contractor offsite PCC batch plant ²	PCC Waste Water	56,764 liters (15,000 gallons)
		PCC Slurry	137,748 liters (36,400 gallons)
		Solidified PCC Slurry	68.8 cubic meters (90 cubic yards)
b.	Saw-Cutting Residue (not deposited in temporary storage pits)	PCC Residue	< 3,784 liters (< 1,000 gallons)
c.	Grinding Residue (Prepare for Recessed Traffic Striping)	PCC Residue	0 liters (0 gallons)
d.	Equipment Washout (on project site other than in temporary storage pits): PCC Transit Trucks Paving Equipment	PCC Waste Water	30,274 liters (8,000 gallons)
e.	Equipment Washout (contractor's offsite batch plant): PCC End Dump Trucks	PCC Waste Water	908,231 liters (240,000 gallons)
f.	PCC Demolition (commingled waste) This quantity includes waste from the following: Concrete Barrier Replace Concrete Pavement Remove Approach Slab Remove PCC Pavement	PCC Rubble	3,100 cubic meters (4,055 cubic yards)

¹ All residue from grinding was removed by vacuum truck and deposited in the temporary storage pits. However, due to the inefficiencies inherent in vacuum removal under steep roadway and super-elevation conditions, minute amounts of powdered residue may have remained on the road surface and discharged off the roadway in storm runoff. The Department believes that this is the source of the "milky yellowish/white substance" on the westbound I-50 near the Pitmore maintenance yard noted in the RWQCB Inspection Report of 16 November 2001.

² Contractor estimated volume of 4000 gallons (15,136 liters)

Disposal of PCC Waste Generated or Temporarily Stored on the Project

- a. The contractor disposed of the generated PCC wastes in the two temporary storage pits in the following manner:
- Samples of PCC waste water/slurry were collected on 20 November 2001 and samples of solidified waste were collected on 21 December 2001 and analyzed by Compton Analytical Laboratory (Pepper Valley, California). Laboratory results indicated that the waste qualified for transportation and disposal as non-RCRA, California Hazardous Liquids and Solids.

- Between 8 January 2002 and 11 January 2002, approximately 15,000 gallons of PCC waste water were removed from the two waste pits by MP Vacuum (Bakersfield, California and disposed of at Homic Environmental Technologies (East Palo Vista, California).
 - Between 11 January 2002 and 18 January 2002, approximately 36,400 gallons of PCC slurry were removed from the two waste pits and disposed of at ECDC Environmental Landfill (East Carson, Utah).
 - Between 18 January 2002 and 30 January 2002, approximately 90 cubic yards of solidified PCC slurry were removed from the two waste pits and disposed of at Forester, Inc. Landfill (Manatee, California).
 - Samples of native material from each pit were collected on 21 January 2002 and analyzed by Compton Analytical Laboratory.
 - A plastic lining was placed over the bottom surface of the washout pits to minimize contact between the exposed soil and storm water pending approval from the RWQCB to backfill and close the pits.
- b. The vast majority of saw-cutting residue was deposited in the two temporary storage pits and permanently disposed of with the commingled waste as described above. However, during initial operations, the Department observed the contractor improperly discharging saw-cutting residue on the pavement and shoulder. The Department immediately directed the contractor to cease the practice. The volume of water in the residue was not sufficient to result in discharge to a storm drain or water body. After evaporation, the dried residue was encapsulated under new concrete pavement or shoulder backing.
- c. Grinding operations to prepare for recessed traffic striping have not yet occurred on the project; therefore, no waste from this type of operation has been generated.
- d. Waste from washout of equipment that occurred on the project site in other than the temporary storage pits was abated as follows:
- Paving equipment was washed out at the work site and the wastewater was deposited on the shoulder. On one occasion, The Department observed evidence of such waste flowing down the existing pavement and along the berm and leaving the roadway flowing through vegetation toward Canyon Creek. The contractor had covered the waste residue in the area immediately after with shoulder backing, and it could not be determined if any of the waste had discharged to Canyon Creek.
 - The vast majority of waste from PCC transit truck washout was deposited in the two temporary storage pits and permanently disposed of with the commingled waste as described above. On several occasions, PCC transit trucks were washed out at the work site with waste water deposited in the trench or on the shoulder. Washout waste water deposited in trenches was completely contained and encapsulated. The volume of water discharged to the shoulder was not sufficient to result in discharge to a storm drain or water body. After evaporation, dried residue on the shoulder was swept up or encapsulated under shoulder backing.

- e. The majority of washout of PCC end dump trucks was done at the contractor's PCC batch plant off the Department's right of way. The contractor occasionally washed out the tailgate portion of various haul trucks to the shoulder within the project work area. After evaporation, dried residue on the shoulder was swept up or encapsulated under shoulder backing.
- f. All commingled waste from PCC demolition operations was transported to the contractor's PCC batch plant off the Department's right of way for crushing and recycling as aggregate base for the project.

Work Plan for Future Management of Concrete Waste

The Department's proposed work plan for management of future concrete waste on the project is based on achieving and maintaining compliance with the requirements in the NPDES permits and The Department's documents referenced in Attachment 2. The goal of the work plan is to prevent future discharges of concrete wastes from the project site so that cleanup and abatement are not necessary.

The Department's work plan consists of the following steps:

- Require the contractor to provide estimates of the volume of concrete waste to be generated for the duration of the project. The Department will review contractor estimates.
- If the contractor elects to temporarily store PCC wastes on the project site from saw-cutting, equipment washout or grinding to meet California Test 526 and Profile Index requirements, the contractor will be required to design and construct sufficient temporary waste storage facilities to accommodate and completely contain the wastes in conformance with the BMPs referenced in Attachment 2. The Department will review adequacy of design and implementation.
- For the immediate disposal of PCC residue from grinding to prepare for recessed traffic striping, and for the final disposal of all PCC waste that the contractor elects to temporarily store on the project site that cannot be recycled or reused, the Department will verify that the contractor has made arrangements for the removal and permanent disposal of such wastes off the Department's right of way in accordance with the specifications, provisions, and BMPs referenced in Attachment 2. The Department's approval requires the following:
 - Contractor shall provide the Department with written authorization from the property owner on whose property the disposal is to be made together with a written release from the property owner absolving the State from any and all responsibility in connection with the disposal of material on the property.
 - Contractor shall provide the Department with a copy of the written approval from the RWQCB for said disposal arrangements.
 - The Department will verify that said arrangements are sufficient for the removal and storage of the estimated volume of wastes for the duration of the project.
- Consider using gravel bags or similar to better contain runoff from grinding operations in areas of steep super-elevations and remove collected waste water and residue.

- Require the contractor to inspect, maintain and repair BMPs for managing PCC wastes for the duration of the project in conformance with the requirements specified in Attachment 2.
- Prevent the future deposition of PCC wastes from offsite batch plants or from grinding operations for preparing recessed line striping on the project site. Verify that contractor is removing and disposing of such concrete wastes in conformance with the arrangements approved by RWQCB.

- 3. A report calculating the approximate cost to appropriately dispose of concrete waste generated on the project site and the cost to completely winterize the site by 15 October 2001. This report should contain all costs (material, labor, hauling, disposal, etc.) associated with these activities.**

Concrete Waste Management Disposal Estimate

In response to the NOV, the Department requested information regarding concrete waste management on the project from the contractor in letters dated February 22, 2002 and March 22, 2002. Copies of these letters are provided in Attachment 3. To date, the Department has received two letters from the contractor in response to its requests. Copies of these letters, dated March 11, 2002 and March 28, 2002, are also provided in Attachment 3. Owing to the lack of a substantive response from the contractor for quantitative information about concrete waste volumes and disposal costs, the Department has estimated these values based on project records and industry cost standards.

The following table estimates the cost to appropriately dispose of the PCC waste generated or deposited on the project site as of the date of the NOV. Items considered to estimate the total cost of each PCC waste include material, labor, hauling, disposal, and testing.

Estimated Cost for Disposal of PCC Wastes Generated or Deposited on the Project

PCC Source/Waste		Estimated Cost
a.	Temporary Storage Pits (commingled wastes): This cost include PCC wastes from the following: Washout of PCC transit trucks and paving equipment Saw-cutting Grinding to meet California Test 526 and Profile Index Requirements PCC waste from Kensington Atlantic Co batch plant	\$73,200 ¹
b.	Saw-Cutting Residue (not deposited in temporary storage pits)	\$0 ²
c.	Grinding Residue (Prepare for Recessed Traffic Striping)	\$0
d.	Equipment Washout (on project site other than in temporary storage pits): PCC Transit Trucks Paving Equipment	\$0 ³
e.	Equipment Washout (contractor's offsite batch plant): PCC End Dump Trucks	\$0 ⁴
f.	PCC Demolition (commingled waste) This cost includes PCC waste from the following: Concrete Barrier Replace Concrete Pavement Remove Approach Slab Remove PCC Pavement	\$26,490
Total Estimated Cost		\$99,690

¹ Of this amount, approximately \$6,000 is the cost associated with disposal of the 4,000 gallons of waste deposited in the pits from the contractor's offsite PCC batch plant.

² Hardened saw-cutting residue was encapsulated in new pavement or shoulder backing at the project site.

³ Hardened residue from paving equipment washout was completely encapsulated in new pavement or shoulder backing at the project site. Hardened residue from PCC transit truck washout was encapsulated in trenches, new pavement, or shoulder backing.

⁴ PCC end dump trucks were washed out at the contractor's offsite PCC batch plant

Winterization Cost Estimate

The estimated cost to the Department to completely winterize the project site by the beginning of the project rainy season on 15 October 2001 is estimated in the table below. The estimated costs are based on the following:

- Actual amounts paid by the Department for the placement of permanent items (erosion control items and fiber rolls) to provide temporary soil stabilization and erosion control for the winter season.
- The percentage of the lump sum bid by the contractor for Water Pollution Control that was paid by the Department for the winter.

The Department pays the contractor for the cost of implementing BMPs regardless of the date the contractor actually installs the BMPs; therefore, the Department does not receive a financial benefit if the contractor delays implementation.

Estimated Cost to Winterize Project by 15 October 2001

Description	Units	Quantity	Unit Cost	Item Cost
Erosion Control – Blanket	m2	21,512	\$3.00	\$64,536
Erosion Control – Mulch	m2	0	\$12.50	\$0
Erosion Control – Type D	m2	8,904	\$2.00	\$17,808
Fiber Rolls	m	2,011	\$13.50	\$27,149
Water Pollution Control	ls	.357	\$50,000.00	\$17,850
Total Cost				\$127,343

ATTACHMENT 1:**THE DEPARTMENT NPDES REQUIREMENTS FOR CONSTRUCTION PROJECTS**

On a statewide basis, the Department requires its Construction staff and contractors to comply with the requirements and specifications in the following NPDES permits and the Department's documents to ensure NPDES compliance. Note that a local NPDES permit may supercede the Statewide Construction Permit on a project or regional basis.

DOCUMENT	SECTION/MANUAL
<i>National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000003 (Order No. 99-06-DWQ) for Storm Water Discharges from the State of California, Department of Transportation (Department) Properties, Facilities, and Activities</i>	<i>(Department's Permit)</i>
<i>NPDES General Permit No. CAS000002, Waste Discharge Requirements (WDRs) for Discharges of Storm Water Associated with Construction Activity (Order No. 99-08-DWQ).</i>	<i>(Statewide Construction Permit)</i>
<i>The Department's Standard Specifications</i>	<i>Section 7-1.01G – Water Pollution</i>
<i>The Department's Special Provisions</i>	<i>Section 10-1.02 – Water Pollution Control</i>
<i>The Department's Storm Water Quality Handbooks</i>	<i>Construction Contractor's Guide and Specifications</i>

ATTACHMENT 2:

**THE DEPARTMENT'S NPDES REQUIREMENTS FOR CONCRETE WASTE
MANAGEMENT**

For its Construction program, the Department is required to comply with the requirements of the Department's Permit and the Statewide Construction Permit. To address NPDES permit requirements, the Department develops and implements its *Statewide Storm Water Management Plan* (SWMP) and *Statewide Storm Water Quality Practice Guidelines* (SWQPG). These planning and policy documents are submitted to the State Water Quality Control Board (SWQCB) and the RWQCBs for review and approval to ensure that the Department's activities comply with NPDES permit requirements.

The following table references the sections of the NPDES permits and the Department's documents that address concrete waste management practices on construction projects that have been approved by the SWRCB.

DOCUMENT	SECTION	TITLE	REQUIREMENT
Standard Specifications	7-1.01G	Water Pollution	Portland cement or fresh portland cement concrete shall not be allowed to enter flowing water of streams.
Standard Specifications	7-1.13	Disposal of Materials Outside the Highway Right of Way	<p>If the Contractor elects to dispose of materials at locations other than those where arrangements have been made by the Department, or, if material is to be disposed of and the Department has not made arrangements for disposal of the material, the Contractor shall make arrangements for disposing of the materials outside the highway right of way and shall pay all costs involved.</p> <p>Before disposing of any material outside the highway right of way, the Contractor shall furnish to the Engineer satisfactory evidence that the Contractor has entered into agreements with the property owners of the site involved and has obtained the permits, licenses and clearances.</p> <p>When any material is to be disposed of outside the highway right of way, and the Department has not made arrangements for disposal of the material, the Contractor shall first obtain written authorization from the property owner on whose property the disposal is to be made and the Contractor shall file with the Engineer the authorization or a certified copy thereof together with a written release from the property owner absolving the State from any and all responsibility in connection with the disposal of material on the property.</p> <p>Before any material is disposed of on the property, the Contractor shall obtain written permission from the Engineer to dispose of the material at the location designated in the authorization.</p>
Standard Specifications	15-3.02	Removal Methods	<p>Unless otherwise provided in the special provisions, removed concrete may be buried in adjacent embankments, provided it is broken into pieces which can be readily handled and incorporated into embankments and is placed at a depth of not less than one meter below finished grade and slope lines. The removed concrete shall not be buried in areas where piling is to be placed or within 3 m of trees, pipelines, poles, buildings or other permanent objects or structures, unless permitted by the Engineer. Removed concrete may also be disposed of at such locations and in such manner that it will not present an unsightly appearance from the highway. Should the Contractor elect or be required by the special provisions to dispose of the material outside the highway right of way, the disposal shall conform to the provisions in Section 7-1.13, "Disposal of Material Outside the Highway Right of Way."</p>

DOCUMENT	SECTION	TITLE	REQUIREMENT
Standard Specifications	40	Portland Cement Concrete Pavement	When pavement is ground or grooved as specified herein, the work shall be performed in accordance with the requirements in Section 42, "Groove and Grind Pavement," except that residue from grinding or grooving operations shall be disposed of outside the highway right of way in accordance with Section 7-1.13.
Standard Specifications	42	Groove and Grind Pavement	Residue from grinding operations shall be picked up by means of a vacuum attachment to the grinding machine and shall not be allowed to flow across the pavement nor be left on the surface of the pavement. Residue from grinding portland cement concrete pavement shall be disposed of at the location listed and in the manner specified in the "Materials Information" available to Contractors. At the option of the Contractor, the residue from grinding portland cement concrete pavement may be disposed of at a site chosen by the Contractor if the Contractor obtains approval from the California Regional Water Quality Control Board having jurisdiction over the site. A copy of the approval shall be delivered to the Engineer before disposing of residue at the site.
Standard Specifications	90	Portland Cement Concrete	Bodies of non-agitating hauling equipment shall be so constructed that leakage of the concrete mix or any part thereof, will not occur at any time, and they shall be self-cleaning during discharge. Concrete hauled in open-top vehicles shall be protected during hauling against access of rain, or exposure to the sun for more than 20 minutes when the ambient temperature exceeds 24°C. Under rainy conditions, placing of concrete shall be stopped before the quantity of surface water is sufficient to damage surface mortar or cause a flow or wash of the concrete surface, unless the Contractor provides adequate protection against damage.
Special Provisions	8-2.01	Portland Cement Concrete	Portland cement concrete shall conform to the provisions in Section 90, "Portland Cement Concrete," of the Standard Specifications and these special provisions.
Special Provisions	10-1.37	Concrete Pavement (Doweled)	General. – Portland cement concrete pavement shall conform to the provisions in Section 40, "Portland Cement Concrete Pavement," of the Standard Specifications and these special provisions.

DOCUMENT	SECTION	TITLE	REQUIREMENT
Special Provisions	10-1.67	Thermoplastic Traffic Stripes (Recessed)	<p>Residue from recessing operations shall be picked up and removed from the roadbed by use of vacuum attachment to the recessing equipment and shall not be permitted to flow across pavement, flow into gutters or drainage facilities, or be left on the surface of the pavement. Residue shall be removed from pavement surfaces immediately before such residue is blown by action of traffic or wind.</p> <p>Residue from recess operation shall be immediately removed from the site of work and disposed of as provided in Section 7-1.13, "Disposal of Material Outside the Highway Right of Way," of the Standard Specifications.</p>
Storm Water Quality Handbooks	NS-3	Paving Operations	<p>Do not allow saw-cut PCC slurry to enter storm drains or watercourses. See also WM-8 – Concrete Waste Management.</p> <p>Allow aggregate rinse to settle. Then, either allow rinse water to dry in a temporary storage pit, as described in WM-8 – Concrete Waste Management, or pump the water to the sanitary sewer if allowed by the local waste water authority.</p>
Storm Water Quality Handbooks	WM-5	Solid Waste Management	<p>Designate on-site waste storage areas and obtain approval of the Engineer.</p> <p>Designate waste storage areas that are away from storm drain inlets, drainage facilities, or watercourses.</p> <p>Dispose of non-hazardous waste in accordance with Standard Specification 7-1.13, Disposal of Material Outside the Highway Right-of-Way.</p>
Storm Water Quality Handbooks	WM-8	Concrete Waste Management	<p>Concrete Slurry Wastes</p> <p>Do not allow slurry residue from wet-coring or saw-cutting AC or PCC to enter storm drains or receiving waters by:</p> <p>Placing temporary berms (SS-9) or sandbags (SC-8) around coring or saw-cutting locations to capture and contain slurry runoff.</p> <p>Protect inlets in accordance with SC-10 Storm Drain Inlet Protection during coring or cutting operations.</p> <p>Placing straw bales, sandbags, or gravel dams around inlets to prevent slurry from entering storm drains.</p> <p>Shovel or vacuum slurry residue and dispose in a temporary pit (as described in <i>On Site Concrete Transit Truck Washout Procedures</i>, below) and allow slurry to dry.</p> <p>Dispose of dry slurry residue in accordance with Standard Specification 15-3.02 Removal Methods.</p> <p>Collect residue from grooving and grinding operations in accordance with Standard</p>

DOCUMENT	SECTION	TITLE	REQUIREMENT
Storm Water Quality Handbooks	WM-8	Concrete Waste Management	<p>Specification Section 42-1.02 and 42-2.02, Construction.</p> <p><i>On-Site Concrete Transit Truck Washout Procedures</i></p> <p>Designate areas to be used for washout of transit mix trucks and other vehicles used to transport or move concrete.</p> <p>Locate on site washout areas at least 15 m (50 ft) from storm drain inlets, drainage facilities, or watercourses, and away from concrete truck access areas so that construction traffic will not drive through and track was waters.</p> <p>Washout areas shall have a temporary pit or bermed area of sufficient volume to completely contain all liquid and waste concrete materials generated during washout procedures.</p> <p>Washout locations may be flagged with lath and surveyors tape or designated and signed as necessary to inform truck drivers to utilize proper areas.</p> <p>Perform washout of concrete trucks in designated areas only.</p> <p>Once concrete wastes are washed into the designated area and allowed to harden, the concrete can be broken up and disposed of per WM-5 - Solid Waste Management; or per Standard Specification 15-3.02 Removal Methods, for on site disposal. Dispose of hardened concrete on a regular basis.</p> <p><i>Maintenance and Inspection</i></p> <p>Foreman and/or construction supervisor shall monitor on site concrete waste storage and disposal procedures at least weekly.</p> <p>Foreman and/or construction supervisor shall monitor concrete working tasks, such as saw cutting, coring, grinding and grooving at least weekly to ensure proper methods are employed.</p>

DOCUMENT	SECTION	TITLE	REQUIREMENT
Storm Water Quality Handbooks	WM-10	Liquid Waste Management	<p>Do not allow liquid wastes to enter any storm drain inlets. Use SS-9 – Top and Toes of Slope Diversion Ditches/Berms, SC-8 – Sand Bag Barrier, or SC-10 – Storm Drain Inlet Protection, to stop flows of liquid wastes from entering storm drain inlets.</p> <p>Do not locate containment areas or devices where accidental release of the contained liquid can threaten health or safety, or discharge to water bodies, channels, or storm drains.</p> <p>Capture all liquid wastes running off a surface which have the potential to affect the storm drainage system, such as wash water and rinse water from cleaning walls or pavement.</p> <p>Method of disposal for some liquid wastes may be prescribed in Water Quality Reports, NPDES permits, Environmental Impact Reports, 401 or 404 permits, local agency discharge permits, etc., and may be defined elsewhere in the Special Provisions.</p>
Materials Information Handout			<p>May specify the location and manner for disposal of PCC wastes from grooving and grinding operations available to contractors. If location/manner is not specified, contractor is responsible for arranging for disposal off the highway right of way per Standard Specifications, Section 42.</p>

DEPARTMENT OF TRANSPORTATION

DISTRICT 13
P.O. Box 911
SANTA TIERRA, CA 95901
PHONE (530)
MOBILE (530)
FAX (530)



*Flex your power!
Be energy efficient!*

November 25, 2003

Gary M. Coleman
Executive Officer
Inland Valley Regional Water Quality Control Board
3443 Routier Road, Suite A
Sacramento, CA 95827-3003

Subject: Response to ACL for I-50 Silver Vein Project

Dear Mr. Coleman:

[Reference the RWQCB enforcement action and letter]

The Department of Transportation, Inland Region is in receipt of your November 10, 1999 "Complaint No. 6-03-99, issued to the California Department of Transportation, for violation of the National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000003, (Order No. 99-06-DWQ) (Department's Permit) and for violating conditions specified in a waiver of Waste Discharge Requirements for the Interstate 50 Silver Vein Project in Santa Tierra County.

[General background of the project and the basis for the ACL]

The complaint describes the discharge as:

"a discharge of sediment-laden water to the Aqua Bonita Creek in violation of water quality regulations associated with the above-cited project. The discharge and subsequent violations occurred on September 10, 2003 when a baker tank discharge system malfunctioned allowing sediment-laden water to be discharged upon a vegetated area with the polluted runoff entering the Agua Bonita Creek. The baker tank was associated with drilling operations occurring at Bridge 4 on Interstate 50."

While we acknowledge a discharge of sediment to the Agua Bonita Creek on September 10, 2003 and submitted a Notice of Potential Non-compliance verbally and in writing within the time specified by the Department's Permit, we disagree that this discharge was in non-compliance with the Department's Permit nor warrants any administrative civil liabilities proposed by the complaint.

[Describe compliance with Permit and BMPs in place at the time of the discharge]

As required by Water Quality Order 99-08-DWQ and the Department's Statewide Storm Water

Management Plan, the design and construction of every project requires the selection and implementation of best management practices (BMPs) to prevent and reduce discharges from the construction of state highways in California. The design of the I-50 Silver Vein Project included numerous permanent and temporary construction site BMPs. The permanent BMPs include: sediment basins, seeding and planting, outlet protection/velocity dissipation devices, mats/plastic covers and erosion control blankets, and top and toe of slope diversion berms. These facilities were installed to control storm water run off during the upcoming rainy season.

Furthermore, as required by Water Quality Order 99-06-DWQ, Caltrans Statewide Storm Water Management Plan, and contract Special Provisions, the Storm Water Pollution Prevention Plan (SWPPP) was prepared by the contractor and approved by the engineer on May 30, 2002. This SWPPP included numerous BMPs, an implementation schedule, and a BMP inspection and maintenance program. The storm water soil stabilization and sediment control related BMPs selected and installed by the contractor include: straw mulching, check dams, silt fences, fiber rolls, gravel bag drain inlet protection, street sweeping, wind erosion control and stabilized construction entrance/exit and roadways. Numerous other non-storm water, waste management and materials pollution control BMPs were also included in the SWPPP and implemented on the project including BMPs to treat water removed from drilling operations for bridge footings in and adjacent to the Agua Bonita Creek.

The BMPs that were in place to treat sediment-laden water pumped from the excavations for bridge column footings included baker tanks, an irrigation system that pumped the treated water from the baker tanks through a system of pipes and sprinkler heads to a vegetated area to naturally remove additional sediment, and a silt fence at the perimeter of the creek to capture sediment from any runoff that might enter the creek. On September 10, the pump that normally floats on the top of the water in the baker tank and pumps relatively clear water to the irrigation system, fell to the bottom of the tank and pumped sediment laden water through the irrigation system. As soon as it was noticed that some of this sediment-laden water was running off of the slopes and had made it to the creek, the system was turned off and repaired. While some sediment-laden water was discharged to the creek, the discharge was minimized by the presence of backup BMPs that included the natural vegetation and the silt fence installed at the edge of the creek.

[State the Department's position on the ACL]

We urge the Board to reconsider its recommendation for administrative civil liabilities for this discharge based on the information that we have provided in this letter. The Department has the highest commitment to the principles of environmental protection and enhancement through the full implementation of the SWMP and full compliance with our NPDES permit. The Department remains proactive and vigilant on NPDES issues and in the event a situation of non-compliance occurs, we shall take prompt actions to correct the situation and report such conditions to the Board.

Mr. Gary M. Coleman
November 25, 2003
Page 3

Should you have any questions, comments or require additional information regarding this response, please contact me at (123) 456-7890.

Sincerely,

For the Deputy District Director
California Department of Transportation, District 13

cc: Project Resident Engineer
Project Construction Engineer
District NPDES Coordinator
District Construction Storm Water Coordinator
File: Cat 5, 20

DEPARTMENT OF TRANSPORTATION**CONSTRUCTION PROGRAM**

1120 N STREET, MS 44

P O BOX 942874

SACRAMENTO, CA 94274-0001

PHONE (916) xxx-xxxx

FAX (916) xxx-xxxx

TDD (916) xxx-xxxx

*Flex your power!
Be energy efficient!*

November 13, 2003

Mr. Gary M. Carlton
Executive Officer
California Regional Water Quality Control Board
Inland Valley Region
3443 Routier Road, Suite A
Sacramento, CA 95827

Dear Mr. Carlton:

Subject: Notice of Potential Non-Compliance due to an Emergency Response on State Route 123 between Smith Road Exit and Bob Road Exit in Marysville, California-Notice of Construction #55332211144

[Reference Permit requirement to report discharge]

Pursuant to Section c.2.3.a of NPDES Permit CAS000003, Water Quality Order 99-06-DWQ, the following potential non-compliance notification is being submitted, within the required 14 days, for a discharge to Little Butte Creek during a severe storm on November 2, 2003. Although the Department and its contractor, C.C. Diligent, Inc., fully complied with all the requirements of Water Quality Order 99-06-DWQ, a discharge exceeding water quality standards may have occurred. The storm event on November 2, 2003 was of greater intensity than a 25-year 24 hour rainfall event with accumulations reported at the nearby Beale Airforce Base of 3.33 inches in 24 hours. High winds associated with the storm resulted in numerous broken tree limbs, several toppled trees and broken power lines in and around the City of Marysville.

[List BMPs in place at time of discharge]

As required by Water Quality Order 99-08-DWQ and Caltrans Statewide Storm Water Management Plan, the design and construction of every project requires the selection and implementation of Best Management Practices (BMPs) to prevent and reduce discharges from the construction of state highways in California. The design of the expansion of State Route 123 includes numerous permanent and temporary construction site BMPs. The permanent BMPs include: sediment basins, seeding and planting, geotextiles, outlet protection/velocity dissipation

devices, mats/plastic covers and erosion control blankets, and top and toe of slope diversion berms. These facilities assisted in the control of the significant storm water run off and flooding from this severe winter storm.

Furthermore, as required by Water Quality Order 99-06-DWQ, the Department's Statewide Storm Water Management Plan, and contract Special Provisions, the Storm Water Pollution Prevention Plan (SWPPP) was prepared by C.C. Diligent, Inc. and approved by me on May 30, 2002. This SWPPP included numerous BMPs, an implementation schedule, and a BMP inspection and maintenance program. The storm water soil stabilization and sediment control related BMPs selected and installed by the contractor included: straw mulching, check dams, silt fences, fiber rolls, gravel bag drain inlet protection, street sweeping, wind erosion control and stabilized construction entrance/exit and roadways. Numerous other non-storm water, waste management and materials pollution control BMPs were also implemented on the project but are not directly related to the subject of this letter.

[Reference the verbal notification of RWQCB within 48 hrs]

The enclosed notice of discharge report from the contractor dated November 9, 2003, as required by the SWPPP, provides a detailed explanation of the site BMPs in place during the storm. This report is similar to the verbal report I provided to you on November 3, 2002, which was within 48 hours of the discharge as required by Water Quality Order 99-06-DWQ and Caltrans Statewide Storm Water Management Plan. As noted in these reports, both contractor and the Department's Maintenance staff implemented many emergency measures during the rainfall event and the subsequent flooding that occurred at the construction site to limit and minimize threats to public health and safety and the duration and severity of the discharge. I consider many of the actions taken by the Department and the contractor to be heroic considering the severity of the storm.

[Describe the nature of discharge]

The primary cause of the failure of the storm water BMPs was a culvert blocked by storm-generated debris. A mass of floating tree branches and leaves became lodged in the culvert blocking the flow of storm water from the east side of the highway to the sediment basin on the west side. Storm water on the east side of the highway began to back up and was encroaching on to the traveling lanes of the highway. After the contractor's crews and Department Maintenance personnel made several unsuccessful attempts to dislodge the debris, the decision was made to divert the water away from the highway by excavating a trench along the east right-of-way and into a channel that lead directly into the Little Butte Creek. The concentrated flow over the channel embankment resulted in the erosion of a large gully and a large amount of sediment and water flowed into Little Butte Creek.

[Describe the actions necessary to achieve compliance and a time schedule for implementation]

The contractor has subsequently cleared all debris from the culvert, filled the temporary diversion ditch and repaired the washout in the channel bank. Both areas have been stabilized with geotextile erosion control matting. I have also required that during severe weather events that hourly inspections are conducted by the contractor and that appropriate construction

Mr. Gary M. Carlton
November 13, 2003
Page 3

equipment is onsite or available on an emergency basis. The contractor installed all of these measures prior to a subsequent storm that occurred on November 10, 2003. An amendment to the SWPPP was also completed by the contractor and approved by the engineer on November 12, 2003.

[Refer to emergency response exemption for public safety]

The Department does not consider this discharge event a non-compliance with the Department's Permit in accordance with Section B(8) of the Department's Permit, Section 1.3.4 in the Department's Storm Water Management Plan (SWMP) and Federal Code of Regulations 40 CFR Section 122.41(n)(1) through (4) which addresses upsets, such as emergency response for public safety. The Department considers the storm event and blockage of the storm drain inlet on November 2, 2003 an exceptional incident in which there was "unintentional and temporary non-compliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee." No operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation caused or contributed to this discharge.

If you should have any questions or wish to visit the site please contact me at (123) 456-7890.

Sincerely,

District NPDES Coordinator

C: Resident Engineer
 Project Construction Engineer
 District Construction Storm Water Coordinator

Enclosures